SUPREME COURT OF THE UNITED STATES.

No. 451.

THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY, CLARK DURANT, ET AL., PLAINTIFFS IN ERROR,

vs.

AMANDA M. McCLURE, EXECUTRIX, AND L. F. SHERMAN, EXECUTOR, OF NATHANIEL McCLURE, DECEASED, JOHN MATHER, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Iowa, before you, or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between Amanda M. McClure, executrix, & L. F. Sherman, executor, of the last will & testament of Nathaniel McClure, deceased, John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent, defendants in error, & Samuel S. Owen, treasurer & collector, & the board of supervisors of Washington County, Iowa, & their successors in office, the Mississippi & Missouri Railroad Company, Clark Durant, Betsy D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, & Richard Mortimer, Thomas Durant, plaintiffs in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Clark Durant, Betsy D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, Richard Mortimer, & Thomas Durant, & the Mississippi & Missouri Railroad Company, plaintiffs in error, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 19th of December, in the year of our Lord one thousand eight hundred and sixty-eight.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

JNO. F. DILLON,
Chief Justice of the Supreme Court of Iowa.

In obedience to the foregoing writ of error, I hereto annex a transcript of the proceedings, record, and judgment of the said cause of Amanda McClure, executrix, & L. F. Sherman, ex'r, of the last will & testament

of Nathaniel McClure, deceased, John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent, Sam'l S. Owen, treas. & collector, & the b'd of sup'rs of Washington Co., Iowa, & their successors in office, the Mississippi & Missouri Railroad Co., Clark Durant, Betsey D. Tracy, Jos. E. Sheffield, Thos. Dunn, Wm. Newton, Rich'd L. Mortimer, & Thomas Durant.

[SEAL.] C. LINDERMAN,
Clerk of the Supreme Court of Iowa.

(Indorsed:) McClure & al. vs. Owen & al. Writ of error.

Filed Dec. 19, 1868.

C. LINDERMAN, *Clk.*

5 Supreme Court of the United States.—December t'm, 1869.

JOSEPH E. SHEFFIELD, CLARK DURANT, Thomas Dun, Richard Mortimer, Betsey D. Tracy, Wm. Newton, & Thomas Durant, & Miss. & Mo. Railroad Co., plaintiffs in error,
v.
AMANDA M. MCLURE & OTHERS, defendants in error.
} Error to the dist'ict Iowa.

Now come the plaintiffs in error, and say that the court below erred, the supreme court of Iowa erred, in the judgment or decree entered in this cause:

1st. The judgment should have been on the facts & record for the plaintiffs in error.

2. The judgment or decree of the court below violated that clause in the Constitution which says no State shall pass any law impairing the obligation of contracts; and the decision of the State court does impair the obligations of the contracts named in the pleadings.

Wherefore the plaintiffs in error pray that said judgment of the said supreme court may be reversed, with costs.

GRANT, *for Plf in Error.*

6 STATE OF IOWA, *Washington County:*

Pleas before the district court of Iowa, at a term begun and holden in the county of Washington, on the first Tuesday of April, 1860, before the Hon. Wm. E. Miller, judge of the eighth judicial district of Iowa, interchanging with the Hon. Wm. M. Stone, judge of the sixth district of said State.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN, TREAS., ET AL.
} In chancery.

Be it remembered that heretofore, to wit, on the 12th day of April, 1860, petition was filed in the office of the clerk of the district court of Washington County, Iowa, in words and figures following, to wit:

STATE OF IOWA, *Washington County, ss:*

To the Hon. Wm. E. Miller, judge of said court, in chancery sitting:

Humbly complaining, showeth unto your honor, your orators, Nethaniel McClure, John Mather, Michael Hayes, O. H. Prizer, and W.

R. Nugent, who sue, as well for themselves as for many other citizens and tax-payers of the county of Washington—too numerous to be here named and set forth—that they now are, and, at the time of committing all the grievances hereinafter complained of, were, residents and tax-payers of said county, and, as such, are and have been interested in the correct administration of the affairs thereof by the several county officers therein, and particularly matters connected with the
7 claimed power to tax for the purposes herein stated.

Your orators further state that heretofore, to wit, on the 21st day of November, 1853, pursuant to proclamation issued by the county judge of said county, a vote was taken therein upon the proposition, whether said county would aid in the construction of the Philadelphia, Ft. Wayne, and Platt River railroad, by said county subscribing one hundred thousand dollars stock in said road; that a majority of the votes cast at said election were in favor of said proposition, all of which will appear from a copy of the records of said court hereto attached, and which, with copies of the other proceedings hereinafter mentioned, are marked "A," and made a part of this bill.

Your orators further show that subsequently, on the 7th day of August, 1854, pursuant to another proclamation of said county judge, another election was held in said county, upon the proposition, "That said Washington County would rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne, and Platt River railroad at the special election held in November, 1853; and that said Washington County will subscribe said fifty thousand dollars stock, when so rescinded, to the Mississippi and Missouri railroad; and that there be county bonds issued therefor;" and that at said election a majority of the votes cast, according to the canvass by the proper officers, were in favor of said proposition, and an order entered in the county records to the effect that the same had been adopted, of which notice was given by publication in the Washington Argus for four successive weeks.

Your orators further represent that after this, on the 4th of August, 1856, as required by a proclamation of the county judge, a third election was held upon the proposition, "Whether the county would subscribe an additional fifty thousand dollars to the capital stock of the
8 railroad company which shall first build a railroad from the Mississippi River to a point not exceeding three quarters of a mile from the court-house in said town of Washington;" that a majority of the votes were against this proposition; and that, subsequently, a fourth proclamation was made, and on the 11th day of December, 1856, an election was held in said county to determine the following proposition: "Whether said county would subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, to construct a railroad from Muscatine to Oskaloosa, by way of Washington, in said county of Washington;" and that, according to the return of said election, and the canvass of the votes cast, a majority of said votes were in favor of said proposition.

Your orators further represent that after this, to wit, on the 5th day of April, 1858, another vote was had in said county upon this proposition: "Whether the county of Washington would aid in the construction of the Mississippi and Missouri railroad, by the subscription of one hundred thousand dollars, in addition to the $50,000 already authorized, to the capital stock of said railroad company;" that this proposition, with its conditions and terms as stated in the proclamation, as shown by the returns and canvass, was adopted, and notice given of the same.

They further represent that afterwards, on the 7th of June, 1858, the

bonds to the amount of fifty thousand dollars, as contemplated by the vote of the 7th of August, 1854, were issued by the county judge, in sums of five hundred dollars each; and on the 26th day of July, 1858, the bonds, to the amount of one hundred thousand dollars, as contemplated by the vote of the 5th of April, 1858, were issued by the county judge, in sums of one thousand dollars each, and delivered to the said company, their officers, agents, or attorneys, to and for their benefit and use.

9 It is further shown by your orators that, according to the proposition submitted and voted upon, on the 7th day of August, 1854, the bonds to be issued were to be payable within twenty years from their date; were to draw ten per cent. interest; and, to pay the same, a tax, not exceeding five mills on the dollar, was to be levied on the taxable property of said county, to continue annually; and after the expiration of fifteen years the rate of tax was to be increased, so as not to exceed one per cent. on the dollar, said rate of tax to be continued until said bonds, with their interest, should be all paid.

The proposition voted upon on the 5th of April, 1858, contained similar provisions in this respect, except that the first fifteen years the per cent. to be levied to meet the interest was not to exceed three mills on the dollar. The proposition for the $50,000 further provided that the company should receive said bonds at their par value in payment of stock, and that they should only be issued upon this condition, and the further one, that they should issue only as fast as the work progressed towards completion within the limits of said county; and the manner of voting, as directed, was that those in favor of said proposition should write or print on their ballots, "For the stock, tax, and rescinding." In the proposition last mentioned and voted upon, the manner of taking the vote as directed was that the voters should have written or printed on their ballots "Railroad stock and tax—yes," or "Railroad stock and tax—no;" and it was therein provided that the bonds should not issue unless said company should give to the county good and sufficient security, approved by the county judge, in the sum of $200,000, conditioned that said road should be completed and in good running order to the town of Washington, in said county, by the 1st of September, 1858; and that a depot should be permanently established not more than

10 one-half mile from the court-house in said town; and not then unless said company would take railroad bonds at their face in payment for stock in said road to be issued direct to the county.

Your orators further represent that for the year 1858 the county judge of said county levied a tax of four mills on the dollar upon all the taxable property of said county, for the purpose of meeting the interest due or to become due on said bonds, the said interest, according to the terms of the bonds, being due semi-annually, on the first of July and first of January in each year; and for the year 1859, a further tax of four mills on the dollar, to meet the interest for that year; that this tax for these years was levied upon the property of your orators, in common with that of all the other property in said county; that a portion of the tax thus levied has been paid by the tax-payers of said county; but that a large proportion, including that levied upon the property of your orators, remains unpaid and uncollected.

Your orators further represent that the amount of said tax remaining unpaid as assessed upon their property; and that of those who have a common interest with them, and for whom, as well as themselves, they file this bill, amounts to a large sum, to wit, at least the sum of one thousand dollars; that the county treasurer of said county, Samuel G

Owen, is proceeding to collect said tax, and threatens to, and unless restrained by the process of this court, will proceed to collect it by seizing the property of your orators, and selling the same at public auction; that the county judge of said county intends, and, as they are informed and believe, will, unless restrained by this court, levy a further tax for the year 1860, and so on for each succeeding year, to meet the interest due on said bonds for said several years; that they have refused
11 to pay said tax, and have frequently, in a friendly manner, protested to said officers against their right and power to levy and collect said tax; that they have made known to them, in the same manner, their right to be protected in their property against any and all such unlawful taxation and seizure; that said officers, impelled by what, as they state, they regard their duty, persist in their determination to levy and collect said tax, by all the means, violent or otherwise, conferred upon them by the laws of the State, and have hence avowed their determination to continue to levy said tax, and, if necessary, to make the same by distress and sale of the property of your orators from time to time, as the said tax is levied and remains unpaid.

Your orators charge that the levy of said taxes is illegal and unwarranted; that its collection is without authority or warrant of law; that they were all opposed to said several propositions, and those voting voted against the same; that the injury about to be inflicted upon them and their property is irreparable; that the collection of said tax can only be resisted at law, and they can only be remedied in such a tribunal by resorting to innumerable numbers of writs; and they, therefore, invoke the aid of the chancellor, to the end that their property may not be sacraficed by officers without authority of law, and that they may not be driven to bring a multiplicity of writs to settle and adjudicate their rights in the premises.

And your orators, that the illegality of the proceedings aforesaid, and their right to be relieved from this onerous taxation may be more clearly seen, make the following charges and specifications; that is to say:
12 First. That, as they are informed and believe, the proposition for the tax, voted upon Aug. 7th, 1854, was not submitted in the manner required by law, containing as it did a proposition to rescind a portion of a proposition previously adopted, and one for stock and tax at the same time; and this, instead of submitting a single or one question, it submitted a double proposition, or two questions, for which there is no warrant in law.

Second. As shown by the record attached, the bonds were to be issued, or the stock subscribed, to the Mississippi and Missouri railroad, when, as they are informed, the subscription was made and the bonds issued to a company pretending to have that name.

Third. By the action of the railroad company, through their executive committee, of date 14th June, 1858, certificates of stock were directed to be issued in the Oskaloosa division of the road of said company to the amount of fifty thousand dollars to Washington County in full payment for the bonds of said county, whereas the stock was, by the proposition voted upon, to be in the whole company, and not in a particular division, and any stock issued otherwise than as directed by said executive committee is, as far as they know, without authority, and invalid.

Fourth. The proposition submitted and voted upon on the 5th of April, 1858, contained a condition, as hereinbefore shown, that the bonds were not to be issued unless said company should give good and sufficient security for the completion of the road as therein stated;

whereas they charge that, as, appears by the record, no such security was given, the said bonds were issued without a compliance on the part of the company with this condition of the proposition.

13 Fifth. At the time of submitting these propositions and taking said votes, the constitution of this State, as they are informed and believe, gave no authority to the counties of this State, whether the same was claimed through legislative sanction or otherwise, to issue bonds, subscribe stock, and levy taxes for any such purpose as that contemplated and provided for by said proposition.

Sixth. The legislature of this State had not at that time, nor since, conferred the power upon Washington County, its officers, or agents, to take stock, in its municipal capacity, in any such company, nor to issue bonds for any such purpose; nor had said county, its officers, or agents, any authority under the law to levy the said taxes for said purposes.

Seventh. The attempt of said officers to levy and collect said tax, under color of the proceedings stated, is without legal or constitutional sanction; and in proceeding to levy and collect the same, they are transcending the authority which they possess as agents who are limited and confined in their powers by the law constituting and creating them.

Eighth. Said bonds were issued to said railroad company, their agents, or attorneys, who had full knowledge of all the circumstances of said votes, and who took the same with full notice of the defects and irregularities complained of, and these bonds have not, to their knowledge, been transferred; and if transferred, they charge that the holder or holders had full knowledge and notice of the want of power in the county to issue the same, if not of the irregularities stated as aforesaid; and they had notice of said irregularities, they also charge.

14 Ninth. By the terms of the proposition submitted August 7th, 1854, the bonds were only to be issued as fast as the work progressed towards completion in said county of Washington, and yet your orators charge that they were issued long before any considerable proportion of said work was done, and that at this time less than one-half of the work has been constructed, and that all the work on the same has ceased, the company, as far as your orators knew, doing nothing towards prosecuting the same to completion through said county.

Tenth. Said bonds are payable, principal and interest, in New York City, a place at which the county judge, as they are advised, had no power to make the same payable; the law knowing no other place at which the county is to pay its indebtedness than the treasury thereof.

In consideration of all these premises, and forasmuch as your orators are remediless according to the strict rules of the common law, but are only relievable in this court, where such matters are properly triable, they pray that Samuel G. Owen, the treasurer and collector; S. P. Young, the county judge; and the holders of said bonds who are ascertained and known, may be made parties respondent to this bill; that they answer all and singular the matters herein stated, as fully as if they were again specifically interrogated in relation to the same; and that your honor may grant an injunction herein; and that a writ may issue from under the seal of this court commanding and restraining the said Samuel G. Owen, his agents, deputies, or successors, from further proceeding to collect the tax levied as aforesaid; that they may be restrained and enjoined from proceeding to seize the property of your petitioners, or those for whom this proceeding is instituted, from

15 which to make said taxes, or any part thereof, by a levy and sale, and commanding and restraining the said S. P. Young, and his successors in office, from levying, or directing the levy, of any taxes for the

year 1860, or any subsequent year, to pay the principal or interest due, or to become due, on said bonds so issued as aforesaid, and the holders of said bonds, when ascertained, from proceeding to collect the same by taxation upon your orators, or their property; that upon a final hearing your honor will direct that said respondents may be perpetually enjoined and restrained from collecting said tax, or the levy of others, as well as the collection of said bonds in the manner attempted and contemplated by the votes aforesaid; and that your honor will grant them such other and further relief as to you may seem meet and proper, consistent with equity, good conscience, and the case made herein; and in duty bound will ever pray, &c.

PATTERSON, SCOFIELD & WRIGHT,
Sol. for Petitioners.

Exhibit "A" referred to in the foregoing bill, and made a part of the same.

STATE OF IOWA, *Washington County, ss:*

Be it remembered that on the 17th day of October, A. D. 1853, the county court of said county ordered a special election to be held in said county on the 21st day of November, A. D. 1853, at the usual places of holding elections in said county, for the purpose of taking a vote for and against the county of Washington, in the State of
16 Iowa, subscribing one hundred thousand dollars stock in the Philadelphia, Ft. Wayne, and PlattRiver air-line railroad; whereupon the sheriff of said county was ordered to post, according to the requirements of the 115 section of the code, the following notice, to wit:

STATE OF IOWA, *Washington County:*

Whereas, at a mass-meeting of the citizens of said county, held in Washington, on the 8th day of October, 1853, there was a resolution passed, requesting the county judge of said county to submit a proposition for said county to take railroad stock:

Therefore, I, Enoch Ross, county judge, do hereby order that there be a special election held in said county, at the usual place of holding elections, on the 21st day of November, 1853, for the purpose of taking a vote for and against the following proposition, to wit: That the county of Washington will aid in the construction of the Philadelphia, Ft. Wayne, & Platt River railroad, by said county subscribing 100,000 dollars stock in said road, and that the county judge of said county issue county bonds therefor, bearing interest at a rate of not more than six per cent. per annum, and payable within twenty years from date; and that there be a tax of five mills, if necessary, on the dollar of the taxable property of said county levied from year to year, for the purpose of paying the interest on said bonds, and that after fifteen years the rate of tax be increased to one per cent., if necessary, for the purpose of paying off said bonds, said rate of tax to continue until principal and interest is all paid; and that said bonds shall not be negotiated at a greater discount than five per cent. on the dollar; and that said bonds shall not be issued until there is a reasonable certainty
17 of the completion of said road, and then only as the work, or that part of said work within the limits of said county, progresses towards completion. Said election will be governed in all respects by the election laws in the code; and the manner of voting on said proposition shall be by ballot. Those in favor of said proposition will vote, "Rail-

road stock and tax;" and those opposed will vote, "No railroad stock and tax."

In testimony whereof, I have hereunto set my hand and affixed the seal of said county, at Washington, this 17th day of October, 1853.

[SEAL.] ENOCH ROSS, *Co. Judge.*

And that I, Enoch Ross, county judge of said county, from the returns made by Wm. P. Organ, sheriff of said county, and the judges and clerks of election from the several townships in said county, with the poll-books of said election, am fully satisfied that the above and foregoing notice and proposition has been posted according to law; and that the requirements of the 115th section of the code has been fully and fairly complied with; and that a majority of the votes cast at said election are in favor of said proposition; and the result is as follows, to wit:

STATE OF IOWA, *Washington County:*

Abstract of votes polled at an election held in said county on Monday, the 21st day of November, 1853, for railroad stock and tax, and against railroad stock and tax.

We, the undersigned, two justices of the peace, and the county judge of said county, do hereby certify that the above is a true abstract of
18 the votes polled at an election held in said county on Monday, the 21st day of November, 1853, on a proposition for said county to take stock in the Philadelphia, Ft. Wayne, and Platt River air-line railroad, as appears from the poll-books returned from the several townships in said county, and this day cancelled by us.

In testimony whereof, we have set our names, with the seal of said county hereunto affixed, at Washington, this 28th day of November, 1853.

[SEAL.]

NORMAN EVERSON,
THOMAS McMILLAN,
Justices of the Peace.
ENOCH ROSS, *County Judge.*

STATE OF IOWA, *Washington County:*

To the voters of said county:

Whereas the county court of said county has been petitioned by several hundred voters of said county, asking said court to order a special election for the purpose of rescinding fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne, & Platt River air-line railroad, at the special election held in said county in November, 1853, and subscribe the same to the Mississippi and Missouri railroad: Therefore, it is hereby ordered by the county court of said county, that there be a special election held in said county, at the usual place of holding elections in the several townships in said county, on Monday, the 7th day of August, 1854, for the purpose of taking a vote for and against the following propositions, to wit:

That said Washington County will rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne, and Platt River air-
19 line railroad, at the special election held in November, 1853; and that said Washington County will subscribe said fifty thousand

dollars stock, when rescinded, to the Mississippi and Missouri railroad, and that there be county bonds issued therefor, bearing interest at a rate not greater than ten per cent. per annum, and payable in twenty years from date, and that there be a tax of five mills on the dollar, if necessary, levied on the taxable property of said county from year to year, for the purpose of paying the interest on said bonds annually; and, after the expiration of fifteen years, the rate of tax be so increased as not to exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds, said rate of tax to be continued until said bonds, with the interest, is all paid, unless said bonds be otherwise disposed of; and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the work progresses towards completion within the limits of said county. Said election will be governed by the election laws contained in the code of Iowa; and the manner of voting on said proposition shall be by ballot; and those in favor of said proposition shall write or print on their ballots, "For stock, tax, and rescinding;" and those opposed shall write or print on their ballots, "Against stock, tax, and rescinding;" and if a majority of the votes cast at said election be in favor of said proposition the same shall be considered as adopted, and the county judge of said county authorized to subscribe said stock and issue said bonds. And it is further ordered, that the foregoing proposition be published in the "Washington Argus" for four weeks in succession before said election, and that there be a copy of said proposition posted up at the place of voting in each township during the day of election.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county, at Washington, this 30th day of June, 1854.

[SEAL.] ENOCH ROSS,
Co. Judge of said Co.

I, Enoch Ross, county judge for said Washington County, being satisfied that the foregoing notice required by 115th section of the code of Iowa has been fully and substantially complied with, and there being a majority of two hundred and ninety votes in favor of said proposition, which is as follows, to wit:

Therefore said propositions are hereby declared to be adopted; and it is hereby ordered that the following notice be published for four weeks in succession in the Washington Argus, to wit:

STATE OF IOWA, *Washington County:*

To the voters of said county, greeting:

You are hereby notified that the propositions for to rescind fifty thousand dollars of the railroad stock voted to the Philadelphia, Ft. Wayne, and Platt River air-line railroad, at the special election in November, 1853, and subscribing the same to the Mississippi and Missouri railroad, and to issue bonds therefor, &c., has been adopted by a majority of two hundred and ninety votes.

In witness whereof, I have hereunto set my hand and affixed the seal of said county, at Washington, this 29th day of August, 1854.

[SEAL.] ENOCH ROSS, *County Judge.*

21 I, L. F. Walden, do hereby solemnly swear that I published a notice of the result of the foregoing election, to rescind and take railroad stock, as stated above, four weeks in succession in the Washington Argus, a weekly newspaper published in the town of Washington, State of Iowa.

LEWIS F. WALDEN.

Subscribed and sworn to before me this 3d day of October, 1854.

ENOCH ROSS, *County Judge.*

STATE OF IOWA, *Washington County:*

Whereas a respectable number of the voters of said county have petitioned to have the question submitted to take $50,000 additional in the capital stock in the railroad company that first builds a railroad from the Mississippi River to the town of Washington: Now, therefore, it is hereby ordered that there be an election held in said county, at the respective places of holding elections in the several townships, on the day of the next general election, to wit, on the 4th day of August, 1856, for the purpose of deciding said question. Should a majority of the votes polled on said proposition be in favor thereof, then the county judge will be authorized, and it shall be his duty, in behalf of said county, to subscribe to the capital stock of the railroad company which shall first build a railroad from the Mississippi River to a point not exceeding three-quarters of a mile from the court-house in said town, Washington, said sum of fifty thousand dollars, additional to any amount heretofore voted, and in payment of said subscription said judge will be further * * * * *

The above proposition was voted down at the election aforesaid.

22 To the voters of Washington County:

Having been petitioned by several hundred of the voters thereof, to submit to the popular vote of said county, at a special election to be called for that purpose, a proposition for Washington County to subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, to construct a railroad from Muscatine to Oskaloosa, by way of Washington, in said county:

Now, therefore, I, John T. Burris, judge of said county, hereby order that there be an election held in said county, at the respective places of holding elections in the several townships thereof, on the 11th day of December, A. D. 1856, for the purpose of deciding said question. Should a majority of the votes cast at said election be in favor of said proposition, and should said railroad company have said railroad fully completed and in running order from Muscatine to the town of Washington, on or before the 1st day of December, 1857, then the county judge will be authorized to subscribe, in behalf of said county, one hundred thousand dollars to the capital stock of said company, in addition to the amount heretofore voted by said county to the stock of said company; and said judge will be further authorized, in payment of said subscription, to issue the bonds of Washington County to the amount of one hundred thousand dollars, made payable to said railroad company twenty years from the date thereof, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, said stock to be subscribed, and said bonds to be issued, upon the completion of said railroad from Muscatine to Washington; provided that portion of said road shall be so completed by the 1st day of December, 1857; but if that

portion of said road shall not be so completed by said date, then
23 said stock shall not be subscribed, nor bonds issued—these being the essence of this agreement. If said portion of said road shall be completed as above provided, and said stock subscribed and bonds issued, then, for the purpose of paying the interest thereon and liquidating said bonds when the same shall become due, there shall be levied such annual tax, not exceeding one per cent. upon the taxable property of the county, as may be necessary therefor. Said tax shall be continued from year to year until the whole amount of both principal and interest shall be fully paid. Said election will be governed by the election laws in the code of Iowa, the vote being by ballot. Those in favor of said proposition will have on their ballots, "More railroad stock & tax;" those opposed will have on their ballots, "No more railroad stock and tax."

In testimony whereof, I have hereunto set my hand and affixed the seal of said county. Done at Washington, this 10th day of November, A. D. 1856.

[SEAL.] JOHN T. BURRIS,
Judge of said Co.

I, John T. Burris, county judge of said Washington County, being satisfied that the proclammary notice required by the 115th section of the code of Iowa has been fully and substantially complied with, and that there being a majority of three hundred and forty-five votes in favor of said proposition, which vote is as follows, to wit:

Therefore, the said proposition is hereby declared to be adopted; and it is hereby ordered that the following notice be published for four weeks in succession in the Washington Press, a weekly newspaper published in said county, to wit:

24 STATE OF IOWA, *Washington County:*

To the voters of said county, greeting:

You are hereby notified that the proposition to take ($100,000) one hundred thousand dollars more railroad stock and tax in the Mississippi and Missouri Railroad Company at the special election held on the 11th day of Dec., 1856, and that the bonds be issued for the same on the 1st day of Dec., 1857, provided the said railroad company complete the said road, and have the same in running order, to the town of Washington by the said first of December, 1857, has been adopted by a majority of three hundred and forty-five votes.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said county, at Washington, this 27th day of Dec., 1856.

[SEAL.] ALBERT ALLEN,
Clerk, and ex officio County Judge.

STATE OF IOWA, *Washington County:*

To the voters of said county:

Whereas the county judge of said county has been petitioned by a respectable number of the voters of said county to submit a proposition to said county to take 100,000 dollars additional stock in the Mississippi and Missouri Railroad Company: Therefore it is hereby ordered that a

poll be opened in the several townships in said county on Monday, the 5th day of April, 1858, for the purpose of taking the votes for and against the following proposition, to wit:

That the county of Washington, in said State, will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars, in addition to the 50,000 dollars already authorized, to the capital stock of said railroad company, and that the bonds of said county be issued in payment of said stock, bearing interest at the rate of ten per cent. per annum, payable in twenty years from date; and that there be a tax of not more than three mills on the dollar levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds; and after the expiration of fifteen years the tax be so increased as not to exceed ten mills on the dollar for the purpose of paying off said bonds, said tax to be continued from year to year until said bonds are all paid off, unless said bonds be otherwise disposed of; said bonds not to be issued unless said company give to said county good and sufficient security, approved by the county judge, in the sum of 200,000 dollars, conditioned that said road be completed and in good running order to the town of Washington, in said county and State, by the first day of September, 1858, and that a depot be permanently established not more than one-half mile from the court-house in said town of Washington; and not then, unless said company take said bonds at their face in payment for stock in said road, said stock to be issued direct to the county. Said election to be governed by the election laws of the State of Iowa; and those in favor of said proposition shall write or print on their ballots, "Railroad stock and tax—yes;" and those opposed to said proposition shall write or print on their ballots, "Railroad stock and tax—no;" and if a majority of said votes be in favor of said proposition the same shall be considered as adopted, and the county judge shall be authorized to subscribe said stock and issue said bonds; and it is further ordered that the foregoing proposition be published in the Washington Press four weeks in succession before said election.

In witness whereof, I have hereunto set my hand and affixed the seal of said Washington County, this 1st day of March, A. D. 1858.

[SEAL.] S. P. YOUNG, *County Judge.*

STATE OF IOWA, *Washington County:*

I, S. P. Young, county judge of said Washington County, being satisfied that the foregoing notice, required by the 115th section of the code of Iowa, has been fully complied with; and there being a majority of five hundred and eighty-eight votes in favor of said proposition, which vote is as follows, to wit:

Therefore the said proposition is hereby declared to be adopted; and it is hereby ordered that the following notice be published for four weeks in succession in the Washington Press, a weekly paper published in said county, to wit:

STATE OF IOWA, *Washington County:*

To the voters of said county, greeting:

You are hereby notified that the proposition to take one hundred thousand dollars additional railroad stock in the Mississippi and Mis-

souri Railroad Company, at the election held on Monday, the 5th day of April, 1858, was adopted by a majority of five hundred and eighty-eight votes.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said county of Washington, this 13th day of April, A. D. 1858.

[SEAL.] S. P. YOUNG, *County Judge.*

27 Now, this 26th day of July, 1858, comes Henry Farnam, and asks the county to issue the bonds of Washington County, State of Iowa, to the amount of ($100,000) one hundred thousand dollars, in payment of the stock of the Mississippi and Missouri Railroad Company, authorized by a vote of the people of said county at an election held on the 5th day of April, A. D. 1858, a proposition having been submitted to them, as authorized by the laws of the State of Iowa; and the court being satisfied that the notice of the adoption of said proposition was published for four weeks in succession, as required by law, all things in relation thereto being duly considered: Therefore, it is hereby ordered that the bonds of said Washington County, State of Iowa, be issued to the amount of one hundred thousand dollars ($100,000) in payment for the same amount of stock in said road, said bonds to be in sums of one thousand dollars each, bearing ten per cent. interest per annum, payable semi-annually, on the first days of January and July in each year, dated July first, 1858; the principal payable in twenty years from date; said bonds to be numbered from one to one hundred. The blank hereto attached is a sample of the bonds to be issued under this order. Said bonds made payable at the Corn Exchange Bank in the city of New York.

S. P. YOUNG, *County Judge.*

JULY 26*th*, 1868.—In compliance with the above order, and as therein directed, the bonds of Washington County are issued to the amount of one hundred thousand dollars ($100,000), and delivered to Henry Farnam, agent for said Mississippi and Missouri Railroad Company, receiving from said company their bonds, under their corporate seal, binding said company to comply with the conditions of the proclamation; which said bond is recorded in the recorder's office of said Washington County, and a certificate of stock, which reads as follows, to wit:

28 *Mississippi and Missouri Railroad Company.*

No. 252.—1,000 shares.

This certifies that Washington County, Iowa, is entitled to one thousand shares of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable, in person, or by attorney, on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate. Interest, at the rate of ten per cent. per annum, will be allowed on all full-paid stock until this division is completed, payable in stock.

In witness whereof, the said company have caused this certificate to be signed by their president and treasurer. Dated at the treasurer's office, in the city of New York, this 26th day of July, 1858,

JOHN A. DIX, *President.*

A. C. FLAGG, *Treasurer.*

$100.

UNITED STATES OF AMERICA,
State of Iowa, Washington County:

The county of Washington, for and in consideration of ten shares, of one hundred dollars each, of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay (James Dawson, inserted), or bearer, the sum of one thousand dollars, on the first day of July, 1878, with interest thereon at the rate of ten per cent. per annum, payable, semi-annually, on the first day of January and first day of July each year; principal and interest payable at the Corn Exchange Bank in the city of New York. And the faith of said county of Washington is hereby pledged for the semi-annual payment of interest, and the ultimate redemption of principal.

I, Samuel P. Young, county judge of the county of Washington, do hereby certify that by a vote of the legal electors of said county,
29 at an election held on the fifth day of April, 1858, in accordance with a proposition submitted to them according to the laws of the State, the county judge of Washington County was authorized to subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and to issue county bonds to the same amount, payable in twenty years, and bearing interest at the rate of ten per cent. per annum; and that the above is one of one hundred bonds of one thousand dollars each, numbered one to one hundred, given for said subscription.

In testimony whereof, I have hereunto set my hand and seal of said court this * * * *

The county of Washington, Iowa, will pay the bearer, at the Corn Exchange Bank in the city of New York, on the first day of January, 1860, fifty dollars, for interest due that day on bond No. .
$50. *County Judge.*

Comes now, June 7th, 1858, John A. Dix, president of the Mississippi and Missouri Railroad Company, and asks the court to issue the bonds of Washington County, Iowa, to the amount of ($50,000) fifty thousand dollars; which amount the county judge of said county was authorized to issue in payment of stock in said railroad company, by a vote of the people of said county of Washington, State of Iowa, taken on the seventh day of August, 1854, a proposition having been submitted to them in accordance with the laws of the State of Iowa; and the court being of the opinion that said railroad company having sufficiently complied with the conditions in said proposition to entitle them to receive said bonds, and said Dix having, on the part of said company,
30 pledged himself, in case said bonds cannot be so negotiated, so as to enable said company to complete said road by the first day of September, 1858, then said bonds are to be returned and delivered into the possession of the judge of said county:

Therefore, it is hereby ordered, that the bonds of Washington County, State of Iowa, be issued to the amount of fifty thousand dollars (50,000), in sums of five hundred dollars (500) each, numbering from one to one hundred, bearing interest at the rate of ten per cent. per annum, payable, semi-annually, on the first day of January and July in each year, at the Corn Exchange Bank in the city of New York. Dated July 1st, 1858. The blank hereto attached is a sample of said bonds.

S. P. YOUNG, *County Judge.*

In compliance with the above order, and as therein directed, the bonds of Washington County are issued and this day delivered to Henry Farnam, as agent for said Mississippi and Missouri Railroad Company, and receiving from said company the following as the action of the executive committee:

OFFICE OF THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY,
New York, 14th June, 1858.

At a meeting of the executive committee of this company, it was resolved that a certificate of stock on the Oskaloosa division for fifty thousand dollars be issued to Washington County, Iowa, in full payment for the same amount of the bonds of said county to be issued in conformity to the vote of the people of said county, on the 7th of August, 1854.

I certify the foregoing to be a true copy of a resolution adopted by the executive committee of this company.

JOHN A. DIX, *President.*

31 *Mississippi and Missouri Railroad Company.*

This certifies that Washington County, Iowa, is entitled to five hundred (500) shares, of one hundred dollars each, in the Mississippi and Missouri Railroad Company, transferable, in person or by attorney, on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate. Interest at the rate of ten per cent. per annum will be allowed on all fully-paid stock, until the division is completed, payable in stock.

In witness whereof, the said company have caused this certificate to be signed by their president and treasurer.

Dated at transfer office in the city of New York, this 14th day of June, 1858.

JOHN A. DIX, *President.*

A. C. FLAGG, *Treasurer.*

And now, on this 21st day of February, 1859, received by mail the following, it being interest due on the first day of January, 1859, on the certificate of stock belonging to Washington County:

No. 396. *Mississippi and Missouri Railroad Company.* *75 shares.*

This certifies that the county of Washington, Iowa, is entitled to seventy-five shares, of one hundred dollars each, in the Mississippi and Missouri Railroad Company, transferable, in person or by attorney, on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by said company, only on presentation of this certificate.

I certify that the above is a true, full, and complete transcript of the records in my office.

32 Given under my hand and seal, April 10, 1860.

[SEAL.] R. DEWEY,
Clerk District Court.

Attached to said petition is an order for an injunction, in words and figures following, to wit:

STATE OF IOWA, *Washington County:*

The clerk of the district court of said county will issue an injunction

as prayed for in the foregoing petition; the petitioners giving bond to your approval, payable to said county, in a penalty of three thousand dollars.

Given under my hand this 10th day of April, 1860.

WILLIAM E. MILLER,
Judge 8th Judicial District.

And afterwards, to wit, on the 12th day of April, 1860, there was filed in the office of the clerk of said district court, a bond, in the words and figures following, to wit:

Know all men by these presents, that we, the undersigned, acknowledge ourselves held and firmly bound unto the county of Washington in the penal sum of three thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

The condition of this obligation is as follows: Whereas the undersigned, Nethaniel McClure and others, petitioners, have this day procured from the Hon. William E. Miller an order for a preliminary injunction against Samuel G. Owen, Co. treasurer; S. P. Young, county judge, of said county; and the bondholders of the county bonds of said county issued for railroad purposes, restraining them from the collection
33 of the taxes levied for the purpose of paying the bonds aforesaid, and the interest thereon, and from levying taxes hereafter for the same purpose, as also the holders of the bonds from the collection of the same: Now, if the said petitioners shall, upon the final hearing of said cause, pay all damages which may be adjudged against them by reason of such judgment, then the foregoing obligation to be void; otherwise to be and remain in full force and virtue.

In testimony whereof, we have hereunto set our hands this 10th day of April, 1860.

NETHANIEL McCLURE.
MICHAEL HAYES.
CALVIN CRAVEN.
JOHN F. VAN DYKE.
JOHN BRYSEN.
JOHN MATHER.
A. W. CHILCOTE.
ISAAC VAN NOSTRAND.
WM. H. JENKINS.

Which said bond was approved by R. Dewey, then clerk of said district court, April 12th, 1860.

And afterwards, to wit, on the 27th of April, 1860, there was issued from the office of the clerk of said court a writ of injunction in words and figures following, to wit:

STATE OF IOWA, *Washington County, ss:*

The State of Iowa to Samuel G. Owen, treasurer; Samuel P. Young, judge of said Washington County; and their successors in office:

Whereas Nethaniel McClure, Michal Hayes, John Mather, O. H. Prizer, and W. R. Nugent, who represent themselves as sueing as well for a great number of residents and property holders of said Washington County—too numerous to be mentioned—as for themselves, did, on the

12th day of April, 1860, file in the office of the clerk of the district court of said county their bill in chancery, praying for general as well as
34 specific relief; and whereas, by an endorsement written on the back of said petition, under the sign manuel of the Hon. Wm. E. Miller, sole presiding judge of the district court of said Washington County, at its April term, 1860, the undersigned is ordered and required, upon the filing by said complainants, in the office of the clerk of said court, a good and sufficient penal bond, in the sum of three thousand dollars, with sureties, to be by me approved, to issue from said office a writ of injunction, prohibiting certain of the defendants in said bill from doing and performing certain acts therein mentioned; and the said complainants having fully complied with the conditions of said order:

Now, therefore, you, Samuel G. Owen, treasurer, and you, the said Samuel P. Young, judge, of said Washington County, and the successor or successors in office of each of you, are hereby strictly enjoined and prohibited from doing the following acts; that is to say: You, the said treasurer, are enjoined and prohibited from collecting, or in any manner receiving, any tax now or hereafter levied for the purpose of paying interest or principal on the bonds issued by said Washington County to the Mississippi and Missouri Railroad Company; and you, the said county judge, are in like manner enjoined and prohibited from levying any more taxes in said county for the payment of said bonds, principal or interest; and the commands of this writ you are in no wise to disregard, under the penalty of the law.

Witness Ralph Dewey, clerk of said court, with the seal thereof hereto attached, at Washington, this 27th day of April, 1860.

[SEAL.] RALPH DEWEY, *Clerk.*

35 And upon said writ of injunction was the following endorsement, to wit:

"We acknowledge due and proper service of this writ on the 27th day of April, 1860.

"S. P. YOUNG, *County Judge.*
"SAMUEL G. OWEN, *Treasurer.*"

And afterwards, to wit, on the 26th day of July, 1860, there was filed in the office of said clerk the answer of the M. & M. Railroad Company in the words and figures following, to wit:

NETHANIEL MCCLURE & OTHERS
vs.
THE COUNTY JUDGE OF WASHINGTON COUNTY & OTHERS.

Answer of the Mississippi and Missouri Railroad Company.

1. The Mississippi and Missouri Railroad Company, the corporation named in said petition, come and says, that said corporation is a proper party defendant to said petition, and prays to be made a defendant thereto.

2. And for answer to said bill says, that the recitals in said bill of the various questions submitted by the county judge, and the votes of the people thereon, are correctly set forth in the exhibit to said bill; and so far as the allegations of the bill differ from the exhibits, they are untrue; and the recitals of the bill that two questions were submitted on the 7th of August, 1854, and not one question, are untrue.

36 3. It is also true that fifty thousand dollars in the bonds of said county, under the vote of the 7th of August, 1854, and one hundred

thousand dollars in the bonds of said county, under the vote of 5th of April, 1858, were, on the 7th of July, 1858, issued and delivered to said M. & M. Railroad Company in the manner set forth in the bill.

4. It is also true, as this defendant is informed, that the tax referred to in said bill has been levied and collected in part.

5. This defendant denies that said tax is illegal and unwarranted, or that the collection thereof is so, or that the plaintiffs are injured thereby.

6. This defendant denies that the proposition of the 7th August, 1854, was not submitted in compliance with law; denies that a double proposition, or two questions, were submitted by that vote, without warrant of law.

7. This defendant denies that the bonds were issued, and the stock subscribed, to a company pretending to have this defendant's name. The stock was issued and accepted by the proper county officers, in the Oskaloosa division of the M. & M. Railroad Company, which is not a reason in law why said tax should not be collected. If the stock was not such as the vote required, the county of Washington has made no complaint thereat, has accepted the certificate, and so far from the county being injured thereby it is benefited, that division of said road having cost at least ten thousand dollars per mile less than the main stem.

8. The proposition of the 5th April, 1858, did require a bond to be given to complete the said road to the town of Washington by the first of September, 1858, and the bond was given, and the road was completed to Washington before that time, and no bonds were issued until the proper officers of the county knew that it would be done. As the condition has been performed, the want of a bond, if true, does not invalidate the tax.

37 9. At the time of submitting said question, this defendant avers that the constitution of this State did give authority to counties in this State to issue bonds, subscribe stock, and levy taxes for the purpose contemplated in said votes.

10. The legislature had then conferred the power to do all the acts complained of, when the bonds issued thereon belonged to bona-fide holders who had taken them on the faith of judicial decisions of this State.

11. The attempt to collect said tax is legal and constitutional, and the proper officers have the power under the laws to collect the same.

12. This defendant denies that this defendant, or its agents or attorneys, had full knowledge, or any knowledge, of all the circumstances of said votes and took the same with notice of any defects or irregularities complained of. This defendant denies that the plaintiffs have any knowledge that said bonds have been transfered; they knew the bonds were voted to be sold to raise money to build the railroad; they knew the road had been completed from the east line of the county to the town of Washington, about 11 miles, and that said road had cost at least thirty-one thousand dollars per mile. This defendant denies that the holders of said bonds had any knowledge of the want of power in the county to issue the same, or any irregularities in the issue of said bonds; and this defendant says that Thomas Durant, Betsey D. Tracy, of Massachusetts; Joseph E. Sheffield, of Connecticut; and Clark Durant, Thomas Dunn, William Newton, and Richard Mortimer, citizens of the State of New York, are the bona-fide holders for value of one hundred and thirty-two thousand dollars of said bonds, and John S (not legible in original), of (not legible in original), the balance, without notice, and are necessary and proper parties to this bill, and without being made parties no decree can be made in this cause.

38

13. The terms of the proposition of 7th of August, 1854, that the bonds were to be issued as fast as the work progressed, was fully complied with. Before a single bond was issued, the company had done one hundred thousand dollars of work in said county; and so far from the company having abandoned the work, or the bonds issued before it was done, it was completed before the 1st September, 1858, and then there had been completed and in operation about 11 miles of road through said county to the county seat, costing the company at least three hundred thousand dollars.

14. The vote of the people authorized the said bonds to be made payable, principal and interest, in New York, and the law fully authorized the same to be done. The law does know another place of payment for a county debt that the county treasury. This defendant has caused this answer to be signed with its common seal, and to be attested by its secretary.

In witness whereof, Hiram Price, the secretary of said company, has affixed the common seal of said corporation hereto, and signed his name this 24th day of July, 1860.

[SEAL.] H. PRICE, *Sec't'y.*

STATE OF IOWA, *County of Scott:*

I, John E. Henry, a director in said M. & M. Railroad Company, do declare on oath that I have read the foregoing answer. I have personal knowledge of all the main facts therein set forth, and believe them to be true; and as to the owners of the above-named bonds, I have
39 been informed that they are as set forth in [in] the foregoing answer, and believe the information to be true. I believe all the bonds refered to have been soid to bona-fide holders, without notice of any defect in the same.

JOHN E. HENRY.

STATE OF IOWA, *County of Scott:*

Be it known that on the 14th day of July, A. D. 1860, came before me, a notary public in and for said county, John E. Henry, to me personally known, and being duly sworn by me, did make oath to and subscribe the foregoing jurat.

Given under my hand and seal notarial the date above written.

[SEAL.] JAMES GRANT,
N. P., Scott County, Iowa.

Attached to the papers in the foregoing entitled cause is a notice in words and figures following, to wit:

STATE OF IOWA, *Washington County:*

The State of Iowa to Samuel G. Owen, treasurer of Washington County, Iowa; Samuel P. Young, county judge of said county; and the Mississippi and Missouri Railroad Company:

You, and each of you, are hereby notified that there is now on file in the office of the clerk of the district court of said Washington County a petition of Nethaniel McClure, Michael Hayes, O. H. Prizer, John Mather, & W. R. Nugent, who sue as well for themselves as for
40 divers other residents and property holders of said county, praying said court to perpetually enjoin and restrain Samuel G. Owen, treas. of said county, and his successors in office, from collecting railroad tax, now levied, or hereafter to be levied, for the purpose of paying

the interest on one hundred and fifty thousand dollars of the bonds of said county issued to said Mississippi & Missouri Railroad Company, and to perpetually enjoin and restrain said Samuel P. Young, judge as aforesaid, and his successors in office, from levying any other or further taxes in said county for railroad purposes; and for other and general relief. And unless you appear in the district court of said county, and answer thereto, on or before the morning of the second day of the November term thereof for the year 1860, judgment will be rendered against you therein.

WRIGHT & BALDWIN, &
PATTERSON & SCOFIELD,
Attorneys for Compl't.

Upon which notice is a return and endorsement as follows:

We acknowledge due and proper service of this notice on us, this 27th day of April, 1860, and waive any copy of petition or notice.

S. P. YOUNG, *County Judge.*
SAMUEL G. OWEN, *Treasurer.*

I received this notice for service April 27th. I served the within notice on the Mississippi & Missouri Railroad Co., by reading the same to James Dawson, agent for said company, at Washington, Washington County, Iowa, in his presence and hearing. He demanded a copy of the notice, and I gave him a copy of the within notice; and no copy of petition demanded.

April 27th, A. D. 1860.

JAMES R. EASTON,
Sheriff of Washington County, Iowa.

Service	50
Copy	15
	65

41 And afterwards, to wit, on the 13th of November, 1860, there was filed in the office of the clerk of said court a motion in words and figures following, to wit:

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL.

Petition in chancery, pending in the Washington County district court.

Come now the complainants, and represent to the court that since the filing of the original bill, and the granting of the injunction in this cause, to wit, on the 26th day of July, 1860, the Mississippi and Missouri R. R. Co., one of said defendants, filed their answer to said bill, in which they disclose the fact that Thomas Durant, Betsey D. Tracy, Joseph E. Sheffield, Clark Durant, Thomas Dunn, William Newton, Richard Mortimer, and John S. Colton are the owners and holders of the bonds mentioned in said bill; that until the filing of said answer, they did not know that said bonds had been transfered. They, therefore, move this court for leave to amend their said bill, by making the above-named persons defendants, and requiring them in their answer to disclose the amount of bonds owned and held by each of them; when,

and for what consideration, the same was purchased; and whether they, or either of them, now have, or at any time were stockholders, or in any manner interested in said M. &. M. R. R. Co., and the amount and nature of such interest; and that said amendment may be made without any prejudice to their said bill.

PATTERSON & SCOFIELD.

And afterwards, to wit, on the 14th of Nov., 1860, there was filed in the office a motion in words and figures following, to wit:

42 State of Iowa, Washington district court.

McClure & others
vs.
The County Judge of Washington County et al.

To the district court of said county:

Now comes Clark Durant, who avers that he is a citizen of the State of New York; Thomas Durant and Betsy D. Tracey, who aver that they are citizens of the State of Massachusetts; Joseph E Sheffield, who avers that he is a citizen of the State of Connecticut; and William Dunn, William Newton, and Richard Mortimer, who aver that they are citizens of the State of New York; and aver that they have been made co-defendants in this cause; that the plaintiffs are all citizens of the State of Iowa; that these defendant are not citizens of the State of Iowa, but citizens of the States above named; that the amount in controversy in said suit exceeds the sum of five hundred dollars, exclusive of costs; and they pray that said cause may be removed from this court to the southern division of the district court of the United States for the State of Iowa.

GRANT, *for the said Defendants.*

State of Iowa, *County of* :

I, James Grant, do declare, on oath, that I have read the foregoing petition; that I am acquainted with the facts therein set forth, and that the same are true.

JAMES GRANT.

Subscribed and sworn to by James Grant, this 14th day of November, 1860.

R. DEWEY, *Clerk.*

43 On the same day there was also filed in the office of said clerk a bond, as follows:

State of Iowa, *County of Washington*:

Know all men by these presents, that we, Clark Durant, Joseph E. Sheffield, Thomas Durant, Betsey D. Tracey, Thomas Dunn, Richard Mortimer, & William Newton, and James Grant, surety, are held and firmly bound unto Nethaniel McClure, John Mather, Michael Hayes, O. H. Prizer, and Wm. R. Nugent, in the penal sum of five hundred dollars; to which payment we bind ourselves and each of us.

Given under our hands this 14th day of October.

The condition of this obligation is this: whereas the above-named principal obligors have applied to the district court of the county of Washington, in said State, to remove and transfer from said court the

case of McClure and others, the above obligees, vs. the county of Washington & others, from said district court to the district court of the United States for the southern division in the State of Iowa; now, if the said obligors shall, on the first day of the next session of said district court of the State of Iowa, southern division, enter into said court copies of said process against them, and shall also appear and enter special bail in said cause, if special bail is required therein, then this obligation to be void; otherwise to remain in full force and virtue.

CLARK DURANT,
By J. GRANT, *Attorney.*
J. E. SHEFFIELD,
BETSEY D. TRACEY,
WILLIAM NEWTON,
THOMAS DURANT,
THOMAS DUNN,
RICHARD MORTIMER,
By J. GRANT, *Att'y.*
NORMAN EVERSON.
JAMES GRANT.

On the same day the following notice was filed in the office of said clerk, to wit:

44 State of Iowa, Washington County district court.

McCLURE & OTHERS
vs.
THE COUNTY OF WASHINGTON & OTHERS. } In equity.

The plaintiff will take notice that Clark Durant, Thomas Dunn, William Newton, & Richard Mortimer, of New York; Thom's Durant & Betsy D. Tracey, of Massachusetts; and Joseph E. Sheffield, of Connecticut, will, on the day of , or as soon as counsel can be heard, will apply to remove said cause from the State to the district court of the United States for the southern division of Iowa, held at Keokuk; and hereto annexed is a copy of the petition for removal.

GRANT, *for said Defendants.*

And afterwards, to wit, Nov. 16th, 1860, the answer of Thomas Durant et al. was filed in the office of the clerk of said court, which answer is in the words and figures following, to wit:

In the Washington County district court.

NETHANIEL McCLURE & OTHERS
vs.
S. P. YOUNG, COUNTY JUDGE, & OTHERS. } Bill in equity.

Now comes Thomas Durant and Betsey D. Tracey, citizens of the State of Massachusetts; Joseph E. Sheffield, a citizen of the State of Connecticut; Clark Durant, Thomas Dunn, William Newton, and Richard Mortimer, citizens of the State of New York, and say that Thomas Durant is the owner of twenty-five of said bonds of one thousand dollars each, and twenty of five hundred dollars each; that
45 Betsey D. Tracey is the owner of eight of said bonds of five hundred dollars each; that Joseph E. Sheffield is the owner of twenty-five of said bonds of one thousand dollars each; that Clark Durant is the owner of twenty-three of said bonds of one thousand dollars each,

and one of five hundred; that Thomas Dunn is the owner of two of said bonds of one thousand dollars each, and sixteen of five hundred dollars each; that William Newton is the owner of twenty of said bonds of five hundred dollars each; and Richard Mortimer is the owner of twenty-five of said bonds of one thousand dollars each, making, in all, one hundred and thirty-two thousand and five hundred dollars.

And they aver that they have a direct interest in the result of said suit, and they pray that they may be made defendants thereto.

And said defendants admit that said votes were had, and said records made, and said bonds issued in compliance with said votes, as set forth in said petition. They admit the levy of the taxes set out in the plaintiffs' petition, and that the proper county officers were proceeding to collect the same when their bill was filed. But these defendants deny that the levy of said tax is illegal, or without authority of law. They know nothing of the allegation of the petitioners, that they voted against the same, but they insist that if they were opposed to the issue of said bonds, they should have made the application to restrain the issue before they were issued. They deny that the collection of the tax is any injury to the plaintiffs.

1. They deny that the proposition of 7th of August, 1854, was in any manner illegal in the form of its submission. They deny that it was a double proposition; it was simply one proposition, to change a subscription from one proposed railroad to another.

46 2. They deny that the bonds were issued to any other company except the one named in the vote.

3. They know nothing of the issue of stock in the Oskaloosa division of the M. & M. Railroad Company, and require proof. They aver that, if true, it was for the benefit of the plaintiffs, as the Oskaloosa division costs over ten thousand dollars per mile less than the first division; and if the county of Washington has not obtained a certificate of stock in the proper division of the road, it has an adequate remedy against the corporation.

4. They deny that no security was given, as required, for the completion of said railroad by the time stated, but it would not be material if no bond was given. The road was finished by the time required, and the county of Washington has the performance of the obligation instead of the security therefor.

5. They deny that the constitution of the State at the time named contained no authority to the counties of this State to do the act complained of.

6. The legislature of this State did confer the power named, and the courts of this State have repeatedly so decided, in cases where the bonds were issued, and in the hands of bona-fide holders.

7. The attempt to collect said tax is both constitutional and lawful.

8. They deny that the said company, its agents or attorneys, took the said bonds with full or any notice of any defects or irregularities in the issue of said bonds. They, and each of them, deny that they had any knowledge of the want of power in the county to issue the same, or that they had any notice of any irregularity or illegality in the issue of said bonds; but they purchased the same in the usual course of trade, without notice of any defect in the same.

47 9. They deny that under the vote of 7th of August, 1854, the said bonds were issued long before any considerable proportion of the work was done, that less than half the work was constructed, and all the work on the same had ceased; so far from it, the work has progressed; is finished to Washington, in said county; and more than twice the entire

subscription in Washington County has been expended in said county; and if not any of it was even completed, it would not affect these defendants as bona-fide holders.

10. They aver that the county judge has power to make the bonds payable in New York; the law does know another place where the county is to pay its debts except at the treasury; and if the place of payment is void it does not vitiate the bond.

And these defendants further say that they believe all of said bonds are held by bona-fide holders, as well as those held by themselves; and they pray that the court may dismiss said bill.

And they aver that the county judge and recorder have neglected to levy and collect the tax required by said vote to pay said interest; and the arrears of interest due thereon amounts to seventeen thousand dollars and upwards; and they pray that said county judge and treasurer may be adjudged and decreed immediately to collect the taxes already levied, and hereafter to levy and collect so much, not exceeding said five and three mills, as will pay the semi-annual interest on said bonds; and for such other relief as the nature of the case may require.

GRANT, *for Defendants.*

STATE OF NEW YORK, *County of New York:*

I, Clark Durant, declare on oath that I am one of the above-
48 named defendants; that I have read the foregoing answer; that so far as the facts therein stated of my own knowledge, they are true; and so far as stated from information, I believe them to be true.

CLARK DURANT.

Witness: H. C. CRANE.

STATE OF NEW YORK, *City & County of New York:*

Be it known that on this the 10th day of July, A. D. 1860, came before me Clark Durant, to me personally known to be the identical person named in the foregoing affidavit, and, being duly sworn by me, made oath to and subscribed the foregoing affidavit.

Given under my hand and seal official the date above written.

EDWIN T. COREY,
Commissioner for the State of Iowa in New York.

And on the same day there was filed in the office of said clerk the following motion, to wit:

NETHANIEL MCCLURE *vs.* S. P. YOUNG, WASHINGTON COUNTY JUDGE; J. E. Sheffield, Durant, et al.	Motion to dissolve injunction.

The above defendants, M. & M. R. R. Co., Clark Durant, and other bondholders, now move to dissolve the injunction—

First. Because the security is not sufficient.

Second. Because the answers deny all the equity of the bill.

Third. Because the answers declare that the bonds have been passed to bona-fide holders, and against them the plaintiffs are not entitled to the relief sought.

49

JAMES GRANT,
For M. & M. R. R. Co.; C. Durant.

NOV. 16, 1860.

And afterwards, to wit, on the 17th day of November, 1860, the following motion was filed in the office of said clerk:

N. McCLURE ET AL.
vs.
S. G. OWEN ET AL.

Comes now the complainants, and moves the court to strike from the files the motion of Clark Durant to dissolve the injunction in this case—

1. By the rules of this court complainant has 20 days from the filing of the answer to reply to or except to the same.

2. Defendant cannot move to dissolve until he has given notice to the other defendants.

3. Defendant cannot move to dissolve until all the def'ts have answered.

PATTERSON & SCOFIELD,
For Complainants.

And afterwards, to wit, on the 18th day of January, 1864, the following motion was filed in the office of the clerk of said court:

NETHANIEL McCLURE ET AL.
vs.
SAMUEL G. OWEN ET AL.

Bill of injunction pending in the district court of Washington County, Iowa.

Come now the plaintiffs in this cause, and suggest to the court here, that since the last continuance of this cause, Nethaniel McClure, one of the plaintiffs, has departed this life, and that Amanda M. McClure and L. F. Sherman have been appointed his executors. Plaintiffs therefore ask that said executors be substituted as parties plaintiff.

A. H. PATTERSON, *for Pl'ffs.*

50 And on the same day there was filed in the office of the clerk of said court a motion to substitute the board of supervisors as defendants for the county judge, as follows:

NETHANIEL McCLURE ET AL.
vs.
S. G. OWEN ET AL.

Come now the plaintiffs, and represent that by the laws of Iowa now in force, the board of supervisors of a county are charged with the duties heretofore performed by the county judge in reference to the levy of the revenue of the county, and ask that the board of supervisors of the county of Washington, Iowa, may be substituted as defendants for the county judge of said county.

PATTERSON & SHERMAN,
Att'ys for Pl'ff's.

And on the 19th day of January, 1864, exceptions to answer of part of defendants were filed in the office of the clerk of said county, as follows:

McCLURE
vs.
S. G. OWEN.

The complainants except to the last clause of the answer of Thomas Durant, Betsey D. Tracey, Joseph E. Sheffield, Clark Durant, Thos.

Dunn, William Newton, and Richard Mortimer, and, for cause, say that said paragraph is not responsive to any portion of said bill, contains matter which can only be set up by way of cross-bill, and cannot be interposed in this action for the want of proper parties.

They therefore ask that the same may be stricken from their answer.

PATTERSON & SHERMAN,
Att'ys for Plaintiffs.

51 And on the same day the following motion to make the injunction perpetual was filed in the office of said clerk, to wit:

McCLURE ET AL.
vs.
OWEN ET AL.

The complainants in this cause move the court here to make the injunction in this cause perpetual, and, for cause, state—

1. That the matters and things set up by said defendants in their answers show no cause against making said injunction perpetual.

2. The bill and answers show that complainants are entitled to the remedy sought.

3. There being no law of the State of Iowa authorizing the proceedings prior to the issue of said bonds, and no law authorizing the issuance of bonds by counties in Iowa for railroad purposes, all such proceedings, both including the votes and issuance of the bonds, were absolutely null and void, and the bonds being thus void in their inception, the county officers have no legal right to levy or collect tax for their payment, and plaintiffs are entitled to the relief sought. All the proceedings had in reference to the submission of the various propositions mentioned in the bill and answers, and the subscription of the stock and issuance of such bonds being without warrant in law, and absolutely null and void, those holding the same, although innocently, and for a valuable consideration, can only look to those from whom they purchased for a reimbursement of the money expended in the purchase.

PATTERSON & SHERMAN,
Att'ys for Pl'ffs.

52 And on the 16th day of June, 1865, the further answer of Clark Durant and other defendants was filed in the office of said clerk, the same being in words and figures following, to wit:

McCLURE & OTHERS
vs.
OWEN & OTHERS.

Now comes Clark Durant, Joseph E. Sheffield, Betsey D. Tracey, Thomas Dunn, C. W. Durant, Thomas Durant, Wm. Newton, Jno. W. Newton, and Richard Mortimer, holders and owners of said bonds, who formerly appeared in this cause, and applied to have the same transfered to the district court of the United States for the State of Iowa, and ask leave of the court to file answer of facts occuring since their last answer was filed, and the same is granted to them; and thereupon these defendants say that on the 15th of August, 1860, Clark Durant, for himself and the other defendants, owners of said bonds, commenced in the district court of the United States for the district of Iowa an action at law against Washington County, upon said bonds and coupons refered to in the bill, to recover their instalments of interest thereof for

July, 1859, January, 1860, and July, 1860; and on the 17th of September, 1860, the county of Washington appeared in said cause, and filed a plea to the jurisdiction, of which a copy is hereto annexed, and on the 9th of October, 1860, said plea was amended, of which a copy is hereto annexed, and the plaintiff demurred to said plea, and the said plea was overruled by the court, and such proceedings were afterwards had, that the defendant pleaded in bar of the plaintiffs' suit, and, among other things, the same matters set up in this bill, and particularly that said bonds were unconstitutional and void; and after said plea in bar
53 was filed, and on the 22d of July, 1863, the said county and said Durant did make an agreed statement of facts in relation to said bonds, and the cause was submitted to the court on the same, and the cause was heard in the circuit court of the United States for the district of Iowa, on the 22d of May, 1863, and judgment was rendered for Clark Durant, and the defendant removed said cause to the Supreme Court at Washington, where the same is now pending, as by a record thereof hereto annexed will fully appear; and these defendants say that the facts and the law arising in that case and the present case are the same. And they further say that they purchased said bonds, and became the holders thereof, in the year 1858, and at that time the supreme court of Iowa held that bonds similar to these, and issued for a like purpose, were authorized by the constitution of Iowa, and these defendants bought the same in good faith for value, upon the faith of said decision. Wherefore these defendants pray that, as to them, the said bill may be dismissed.

GRANT, *for said Defendants.*

STATE OF IOWA, *Scott County:*

I, James Grant, declare on oath that I am attorney for the defendants above named; that they are not residents of this State; and I know all the facts above set forth, except the fact as to the purchase of said bonds; that the facts therein set forth are true, as I believe, as to the purchase, and as I know as to the others.

JAMES GRANT.

Subscribed and sworn to by James Grant, before me and in my presence, this 16th day June, A. D. 1865.

Witness my hand and seal notarial the day and year last above written.

[SEAL.]

S. F. SMITH,
Not. Pub., Scott County, Iowa.

54 UNITED STATES OF AMERICA:

District court in & for the southern district of the State of Iowa.

[Copy.]

CLARK DURANT
vs.
THE COUNTY OF WASHINGTON.

Comes now the said defendant, by Patterson & Scofield, its attorneys, and, for plea in this behalf, says that this court ought not further to have and maintain jurisdiction in this cause, because, it says, that the Mississippi & Missouri R. R. Comp., a citizen of the State of Iowa, having been incorporated as such, under and by virtue of the laws of Iowa contained in chap. 43 of the code, and that as such citizen and corpo-

ration having entered into the objects of its incorporation, and surveyed and projected a railroad from the Mississippi to the Missouri River, proposed to the said county of Washington that she would immediately enter upon the construction of said road, and would build and construct the same through the county of Washington, if said county would loan her credit to said railroad company; which said proposition was by said county accepted, on condition that she was to become one of said corporators by receiving the certificates of the capital stock of said railroad company to the full amount of the securities by her so loaned to said railroad company; that, in pursuance of said agreement, said bonds in said plaintiff's petition mentioned, were issued to the said James Dawson, as the agent and trustee of said railroad company, and were by him delivered to said plaintiff, without said company having received any consideration therefor, and that said plaintiff, well knowing all the circumstances of said transaction, that said railroad company, on account of its being a citizen of said State, could not sue in this hon. court, received the same for the purpose of instituting this suit; all of
55 which this defendant is ready to verify. Wherefore it prays judgment. And for other plea in this behalf defendant says that the court here should not entertain jurisdiction in this behalf, because it says that the county of Washington aforesaid is not a citizen of the State of Iowa, within the true intent and meaning of the second section of the 3d article of the Constitution of the United States. And for other and further plea in this behalf, def't says that the court should not entertain jurisdiction, because, it says, that it is created and erected into a county for the purpose solely of exercising certain sovereign powers delegated to it by the State of Iowa, and for no other purpose whatever; and that it is a part of the government of the State of Iowa, and as such comes within the true intent and meaning of the eleventh article of the amendments to the Constitution of the United States, and cannot be sued in this hon. court. And for other plea in this behalf, def't says that this hon. court should not have or maintain jurisdiction in this cause, because, it says, that it was erected into and became a corporation (if a corporation at all) under and by virtue of a territorial law of the Territory of Wisconsin, at that time one of the Territories of the United States, and in no other manner, and that it does not hold its corporate existence by any legislative act of said State of Iowa. All of which def't is ready to verify. Wherefore it prays judgment.

PATTERSON & SCOFIELD,
Att'ys for Defendant.

(Endorsed:) Filed Sept. 17th, 1860.

A. T. WALLING, *Dep. Clerk.*

56 [Copy.]

CLARK DURANT
vs.
WASHINGTON COUNTY.

Comes the defendant, and, for further plea in this behalf, says that there is now pending in the district court in and for the county of Washington, in the State of Iowa, an original bill in chancery, filed by Nethaniel McClure and several other citizens of said county, praying said court to forever enjoin the levy and collection, in said county, of any taxes for the purpose of paying principal or interest on the bonds sued on in this cause, and praying that said bonds, both principal and

interest, may be decreed to be null and void, and of no effect in law or equity, to which said bill the said def't, the treasurer & recorder of said county, & county judge, the railroad company mentioned in said bonds, and the unknown holders of said bonds were made parties, and that the present plaintiff, as one of the owners of said bonds, and said railroad company, have filed answers in said cause, denying the allegations of said bill, and that the same is still pending and undetermined in said court. Wherefore def't prays judgment, whether this court will further maintain jurisdiction in this cause.

PATTERSON & SCOFIELD.

(Endorsed:) Filed Sept. 17, 1860.

A. T. WALLING, *Dep. Clerk.*

[Copy.]

CLARK DURANT
vs.
WASHINGTON COUNTY.

Comes now the def't, and, for amended plea in this behalf, says that the plaintiff should not have and maintain his action aforesaid in this hon. court, because, he says, that there is now pending in the district
57 court of Washington County, Iowa, an original bill in chancery, in which one Nethaniel McClure and several other persons, complainants, and the county judge of said county, the treasurer & collector of said county, the said pl'ff, and the unknown owners of any of the railroad bonds issued by said county, were made respondents, and that said railroad company and said defendant, by J. Grant, their sol'r, have answered said bill; that said bill prays for an injunction restraining said county judge from levying any more taxes for the payment of principal or interest on the bonds issued by said county for railroad purposes; that the treasurer of said county be also restrained from collecting, by distress or otherwise, the taxes, at that time, or which might thereafter be levied for the payment of principal, interest, or any part of said bonds; that said original bill was presented to the hon. the judge of said court, at the April term thereof for the year 1860, and an allowance of said injunction ordered thereon; that said bill was, during said term, filed, and the injunction therein prayed issued during said term, and duly served on said officers; that said bill further prays said injunction to be made perpetual; that the bonds and interest-warrants therewith issued for railroad purposes, as aforesaid, may be decreed to be null and void, and of no effect whatever, either in law or equity; that the same may be delivered up to be cancelled, and for other and general relief; that said original bill is still pending in said court, and undetermined in any manner, and that said injunction is still in force, undissolved, or in any manner modified. All of which def't is ready to verify.

Whereupon it prays judgment, &c.

PATTERSON & SCOFIELD.

(Endorsed:) Filed Oct. 9, 1860.

58 And afterwards decree was rendered in vacation, and entered of record as of the last day of the January term of said court for the year 1865, which decree appears in another part of this transcript in connection with other record entries; and on the 19th day of September, 1865, Clark Durant and other defendants filed their bill of exceptions

in the office of said clerk, the same being in the words and figures following, to wit:

McCLURE & OTHERS
vs.
OWEN & OTHERS.

Be it remembered that this cause was submitted to the court at the January term, 1865; that the board of supervisors of Washington County, S. G. Owen, treasurer of Washington County, were present by their attornies, and the rest of the defendants were not present; that the cause was submitted to be taken by the court, and decided in vacation, the attorneys then present consenting, the other defendants not present making no agreement; that the cause was decided and decree made in vacation, on or about August 10, 1865, and transmitted to the clerk, and entered by the clerk in vacation as of the last day of the January term, 1865.

There was no evidence offered to the court. The cause was tried on the bill and answers of Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracey, Joseph E. Sheffield, Thos. Dunn, Wm. Newton, Richard Mortimer. No default was taken against any of the parties.

To the decision of the cause in vacation the said last-named defendants objected, and ask the court to sign this their bill of exceptions, which is done at the time of rendering the decree.

(Signed) WM. LOUGHRIDGE, *Judge.*

59 And on the 21st day of Sept., 1865, there was filed in the office of the clerk of said court a bond and notices of appeal as follows:

Know all men by these presents, that we, the Mississippi and Missouri Railroad Company, Thomas Durant, Betsey D. Tracey, Clark Durant, Joseph E. Sheffield, Thomas Dunn, William Newton, and Richard Mortimer, principals, and C. Whitaker, surety, are held and firmly bound unto Amanda McClure, L. F. Sherman, John Mather, Michael Hayes, O. H. Prizer, Wm. R. Nugent, in the penal sum of one hundred dollars, to the payment of which we bind ourselves, and each of us, this 24th day of January, 1865.

The condition of the above obligation is this: whereas the above-named obligors have appealed from the decision of the district court of Washington County, Iowa, in a certain bill in equity, wherein the above-named obligees are plaintiffs, and the above-named obligors, and Samuel G. Owen & others are defendants; now, if said obligors shall duly prosecute their, and shall pay all costs & damages which may be awarded against them, and abide by and perform all the orders & decrees of the Supreme Court in the premises, this obligation to be void; otherwise in force.

MISS. & MO. R. R. CO.,
THOMAS DURANT,
BETSEY D. TRACEY,
JOSEPH E. SHEFFIELD,
THOMAS DUNN,
WM. NEWTON,
RICHARD MORTIMER,
Obligors, Principals,

By J. GRANT, *Att'y of Record.*
C. WHITAKER.

(Endorsed:) Filed, and approved by me, this 21st day of September, 1865, as of January term, 1865.

C. T. JONES, *Clerk D. C.*

60 State of Iowa, Washington district court.

AMANDA MCCLURE & L. F. SHERMAN, JOHN MATHER, Michael Hayes, O. H. Prizer, & W. R. Nugent
vs.
SAMUEL G. OWEN, S. P. YOUNG, THE BOARD OF SUPERvisors of Washington County, the Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracey, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, & Richard Mortimer. } In equity.

The clerk of the district court of Washington County will take notice that the defendants, the Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracey, Joseph E. Sheffield, Thomas Dunn, William Newton, and Richard Mortimer have taken an appeal from the decision of the district court in this cause to the supreme court at the next term, to be held at Davenport; and the clerk will make a transcript of the record forthwith of the following papers: The petition, notices, answers, bill of exceptions, memorandum of the court, and all the record entries.

GRANT & SMITH, *for Appellants.*

Received this notice 20th Sept., 1865.

C. T. JONES, *Clerk D. C.*

State of Iowa, Washington district court.

AMANDA MCCLURE & L. F. SHERMAN, JOHN MATHER, Michael Hayes, O. H. Prizer, & W. R. Nugent
vs.
SAMUEL G. OWEN, S. P. YOUNG, THE BOARD OF SUPERvisors of Washington County, the Mississippi } In equity.
61 & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracey, Joseph E. Sheffield, Thomas Dunn, William Newton, & Richard Mortimer.

The above-named plaintiffs, and the defendants Samuel G. Owen, S. P. Young, and the board of supervisors of Washington County, will take notice that the defendants, the Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracey, Joseph F. Sheffield, Thomas Dunn, Wiliam Newton, & Richard Mortimer, have taken an appeal from the decision of the district court to the supreme court of Iowa, at the next term, to be held at Davenport, in Scott County, Iowa.

GRANT, *for Appellants.*

We accept service of the above notice on this 19th of September, 1865.

PATTERSON & SHERMAN,
Att'ys for Pl'ffs.
SAMUEL G. OWEN.
S. P. YOUNG.

I received this notice Sept. 19, 1865; the within-named S. G. Owen, S. P. Young, & Patterson and Sherman accepted service as above. I also served this notice on Enoch Ross, as chairman of the board of supervisors of Washington County, Iowa, by reading the original in his presence and hearing, on the 19th day of September, 1865, in Washington Township, Washington County, Iowa, and by giving him a copy of this notice.

S. E. HAWTHORNE,
Sheriff Washington County, Iowa.

Service..... 1 25
Copy & milage..... 25

Afterwards the decision of said district court in said cause was reversed in the supreme court of Iowa, and subsequently the following pro-
62 ceedings were had in said district court:

On the 24th day of September, 1866, there was filed in the office of the clerk of said court a motion to make the board of supervisors parties def'ts, in words and figures following, to wit:

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL.

The complainants state that since the filing of the original bill in this cause the county judge of this county, as of all the counties of this State, were by law superceded in their official duties, as charged in compl'ts' bill, by the creation of a board of supervisors. They, therefore, pray that the board of supervisors of said Washington County may be made parties def'ts in the room and place of the hon. the county judge of said county.

PATTERSON & SHERMAN,
Att'ys for pl'ffs.

On the 17th day of January, 1867, the M. & M. R. R. Co., and other defendants, filed the following supplemental and additional answer in the office of said clerk:

MCCLURE & OTHERS
vs.
OWEN & OTHERS.

Now comes the said defendants, the Miss. & Mo. Railroad Company, Clark Durant, Joseph E. Sheffield, and file this supplemental and additional answer in addition to their former and amended answer: Say that since their last answer was filed, the said suit of Clark Durant vs. the county of Washington, which was taken by the county of Washington to the Supreme Court of the United States, has been dismissed, and the said judgment of the district court for the district of Iowa in
63 favor of Clark Durant has been affirmed, and stands in force and unsatisfied. And, for further answer, these defendants say that they severally received said bonds, which are negotiable instruments, in good faith for value; that at the time they received the same, the supreme court of the State of Iowa had decided that said bonds were valid and binding under the constitution and laws of the State of Iowa; and that any subsequent decision which holds these bonds owned by the defendants who now hold them void or null, as being against the constitution and laws of the State of Iowa, as a violation of that clause of the

Constitution of the United States which provides that no State shall impair the obligation of contracts; and these defendants insist that they are entitled to be protected under the Constitution of the United States; and they pray that said bill may be dismissed.

JAMES GRANT,
Att'y for said Defendants.

STATE OF IOWA, *Scott County:*

I, James Grant, declare on oath that I am defendants' attorney, and know the facts above set forth to be true.

JAMES GRANT.

Subscribed and sworn to by James Grant, before me and in my presence, this 5th day of January, A. D. 1867.

Witness my hand and seal notarial.

[SEAL.]

S. F. SMITH,
N. P., Scott County, Iowa.

And on the 22d day of January, 1867, the board of supervisors of Washington County, Iowa, who have been made a party defendant in the above cause, and for answer to the bill of complaint herein, say that they admit that the several exhibits attached to the plaintiffs' bill are correct; they are not advised as to who are owners of the bonds
64 specified in the plaintiffs' bill; they neither admit nor deny that said bonds were issued without lawful authority; and submit to the court such decree herein as may be equitable.

LEWIS & BENNETT,
Att'ys for the Board of Supervisors Washington Co., Iowa.

On the 26th day of June, 1867, Clark Durant and other defendants filed in the office of said clerk the following further amended answer:

McCLURE & OTHERS }
vs.
OWEN & OTHERS. }

The said defendants, Clark Durant and others, in leave, amend & add to their answer, and say, that on the day of , 1867, by the judgment and consideration of the circuit court of the United States for the district of Iowa, there, upon due process of law, recovered a further and other judgment upon the interest warrants of both classes of said bonds, to the amount of seventy thousand six hundred fifty-two $\frac{37}{100}$ ($70,652$\frac{37}{100}$) dollars. That in said action Clark Durant was plaintiff, and the county of Washington, of which said plaintiffs are tax-payers, and of which county they are privies as to said judgments, of which a copy is hereto annexed, and that said judgment is a complete bar to any relief in equity in this court.

GRANT & SMITH,
For Defendants.

I, James Grant, attorney for said defendants, declare on oath that I have read the foregoing amendment, and know the facts stated therein to be true.

JAMES GRANT.

Subscribed and sworn to by J. Grant, before me and in my presence, this 19th day of June, 1867.

[SEAL.]

S. F. SMITH,
N. P., Scott Co., Iowa.

65 On the 29th day of June, 1867, the following agreement as to certain facts was filed in the office of said clerk:

McCLURE & OTHERS
vs
OWEN & OTHERS.

The following facts are admitted to save encumbering the record with transcripts:

That on the 15th day of August, 1860, Clark Durant, as holder of coupons on said bonds, commenced a suit in the district court of the United States for the district of Iowa; that the county of Washington appeared to said action, and defended the same on the same grounds set up in this bill, and also pleaded the pendency of this suit in bar of said action; that the district court of the United States for Iowa, on the 1st day of April, 1862, rendered judgment on said coupons for the plaintiff, and the cause was taken to the Supreme Court of the United States, and there the writ of error was dismissed; that on the 15th of January, 1861, Clark Durant commenced in said United States district court another action against Washington County for the January, 1861, interest on said bonds; that subsequently, by agreement of the parties, said second cause was continued to await the decision of the first, and agreement also made that all the coupons held by the plaintiff when the last cause should be tried ; that it was tried in May, 1867, and judgment rendered for the plaintiff for the sum of seventy thousand six hundred and fifty-two $\frac{37}{100}$ dollars. The records in both said causes containing counts on each coupon, and being long, this agreement is made to save costs.

PATTERSON & RHINEHART,
For Complainants.
LEWIS & BENNETT,
Att'ys for Washington County.

66 On the 17th day of September, 1867, the following agreement was filed in the office of said clerk:

McCLURE & OTHERS
vs.
OWEN & OTHERS.

In this cause, this cause is submitted to the court on written arguments. May be decided in vacation as of this term. Plaintiffs to submit his argument to the other side in 30 days. Defendants to reply in 10 days after notice on them.

Sept. 17, 1867.

PATTERSON & RHINEHART,
Att'ys for Compl'ts.
GRANT & SMITH,
For Def'ts who have answered.
LEWIS & BENNETT,
For Treasurer & Board of Supervisors of Washington County.

And on the 24th day of March, 1868, there was filed in the office of said clerk the following application to remove said cause to United States circuit court:

McCLURE & OTHERS
vs.
OWEN & OTHERS.
Petition for removal of said cause into U. S. c. c't.

Now comes Jos. E. Sheffield, Clark Durant, Thomas Dunn, Jeremiah

Gray, Wm. Newton, Richard Mortimer; H. B. Newton, Jno. W. Newton, administrators of Jno. M. Newton, deceased, and state that they are non-residents, and not citizens of the State of Iowa; that the controversy herein is in part between citizens of the State of Iowa and citizens of other States of the United States; that the matter in dispute exceeds five hundred dollars, besides costs; that they file hereunto an affidavit of Jos. E. Sheffield, in accordance with the act of Congress in such case made and provided. They pray that the said above-entitled cause
67 may be removed into the next circuit court of the United States for the district of Iowa, at Des Moines. They offer herewith good and sufficient security for their entering in such court, on the first day of its session, copies of all process, pleadings, depositions, testimony, & other proceedings in said court and to do such other acts as are prescribed in the act of Congress authorizing such removal.

GRANT, *for said Defendants.*

McCLURE *vs.* OWEN & OTHERS. } Affidavid of Jos. E. Sheffield.

I, Jos. E. Sheffield, being duly sworn, do state, on oath, that I am one of the defendants in the above-entitled cause; that the said suit is now pending in said district court of Washington County, Iowa; that it is a controversy between citizens of the State of Iowa and citizens of the States of the United States; that the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs; that I have reason to believe, and do believe, that, from prejudice or local influence, I will not be able to obtain justice in said State court.

JOS. E. SHEFFIELD.

Subscribed and sworn to by Jos. E. Sheffield, before me & in my presence, this 9th day of March, A. D. 1868.

[SEAL.] SAM'L B. GORHAM,
Notary Public, New Haven County Court.

NEW HAVEN, *March 18th*, 1868.

STATE OF CONNECTICUT, *County of New Haven:*

Subscribed and sworn to before me this date by Joseph E. Sheffield.

[SEAL.] H. HYDE HARRISON,
Notary Public.

68 And on the 27th day of April, 1868, the following motion to redocket was filed in the office of said clerk:

In district court, Washington County.

McCLURE *vs.* OWEN ET AL. } Motion to redocket.

Now comes Sheffield, Durant, Mortimer, & others, parties defendants herein, and move that this cause above entitled be redocketed—

1. Because the same has never been stricken from the docket.
2. Because it has not yet been heard, tried, nor determined.
3. Because it belongs rightfully upon the docket.

GRANT & SMITH,
Att'ys for Defendants above named.

On the 28th day of April, 1868, the following bill of exceptions was filed in the office of said clerk:

AMANDA MCCLURE, EXECUTRIX OF N. McCLURE, dec'd, *vs.* OWEN ET AL. } Bill of exceptions.

And now, on the 28th day of April, 1868, this cause came on for hearing upon the petition and affidavit of Joseph E. Sheffield & other parties, defendants herein, for removal of said cause to the circuit court of the United States for the district of Iowa—Grant & Smith, for said petitioners, and Lewis, & Patterson & Rhinehart, appearing. And said petition and affidavit are in the words and figures following, to wit: (See motion on page 60, and affidavit on page 61.) And after argument, the court refused to grant said petition, and his order is entered of record in the words and figures following, to wit: (See record entry on page 72.)

To all of which rulings, orders, and judgments the said defend-
69 ants named in said petition for removal except, and pray the court to sign this their bill of exceptions; which is now done this 28th day of April, 1868.

E. S. SAMPSON, *Judge.*

And on the 16th day of June, 1868, the following bill of exceptions was filed in the office of said clerk:

Washington district court, April term.—In equity.

MCCLURE & OTHERS *vs.* OWEN & OTHERS.

Be it remembered that now, on this 2d day of April term, 1868, this cause came on to be heard on a motion, affidavit, & bond to transfer this cause to the circuit court of the United States for the district of Iowa, made by Clark Durant & others, defendants. This cause was submitted to the court by written argument at September, 1867, to be decided as of that term, the plaintiffs to furnish written argument in thirty days, & defendants to reply in ten days. Up to the date of the above motion no written argument had been filed or presented to the court on either side, and at the time of the motion to transfer the cause the court had not seen the papers, or taken the cause under consideration, solely because such written arguments had not been presented. The court overruled the motion to transfer the cause, because the cause had been submitted. The plaintiff afterwards filed a written argument, as did the defendants, the latter out of respect to the court, and under protest, waiving no right under the motion to transfer the cause. The cause was heard on the bill & exhibits, the answers, and an agreed statement of facts, which was prefixed to the supplemental and additional answer filed 17th Jan., 1867. To the decision of the court, in re-
fusing to transfer the cause, and the decree of the court in favor
70 of plaintiffs, the defendants, Clark Durant & others, excepted, & prayed the court to sign this bill of exceptions; which is done during the progress of the trial.

E. S. SAMPSON, *Judge.*

On the 4th day of May, 1868, there was filed in the office of said clerk a bond in words and figures following, to wit:

In Washington dist. court.

McCLURE *vs.* OWEN ET AL. } Bond.

Know all men by these presents, that we, Jos. E. Sheffield, Clark Durant, Thomas Dunn, Jeremiah Gray, Wm. Newton, Richard Mortimer; H. B. Newton and Jno. M. Newton, administrators of Jno. M. Newton, dec'd, as principals, and Charles Whittaker as surety, are held and firmly bound unto plaintiffs herein in the penal sum of five hundred, to which payment, well and truly to be made, we do hereby bind ourselves, heirs, executors, & assigns, firmly & severally, and the heirs of each of us firmly, by these presents. Given under our hands this 24th day of April, A.D. 1868.

The condition of this bond is such, that whereas the above-named obligors have now filed in said court their petition for removal of said cause to the United States circuit court of the U. S. for the district of Iowa; now, if the said obligors shall enter in said court, on the 1st day of its session, copies of all processes, pleadings, depositions, testimony, and other proceedings in said suit, and do such other acts as are required by act of Congress prescribing such removal and bond, then this obligation to be void; otherwise in full force and effect.

SHEFFIELD,
DURANT,
DUNN,
GRAY,
MORTIMER,
NEWTON & NEWTON, *Adm's*,
By GRANT & SMITH, *their Att'ys.*
C. WHITTAKER.

71 STATE OF IOWA, *Scott County:*

I, Charles Whittaker, being duly sworn, do state, on oath, that I am worth, in real estate situate in Scott County, Iowa, the full amount of the within bond over and above all my liabilities; &, exclusive of homestead, real estate is clear of incumbrance.

C. WHITTAKER.

Subscribed and sworn to by C. Whittaker, before me and in my presence, this 25th day of April, A. D. 1868.

[SEAL.]

S. F. SMITH,
N. P., Scott County, Iowa.

Said bond was, when filed, approved by the clerk of said dist. court.

On the 16th day of June, 1868, there was filed in the office of the clerk of said court a notice of appeal in the words and figures following, to wit:

AMANDA M. MCCLURE & L. F. SHERMAN, Executors of N. McClure; John Mather, Michael Hayes, O. H. Prizer, W. R. Nugent, compl'ts,

vs.

THE BOARD OF SUPERVISORS OF WASHINGTON County, Iowa; the Treasurer of Washington County, Iowa; the Mississippi and Missouri R. R. Company, Clark Durant, Joseph E. Sheffield, Betsey D. Tracey, Thomas Durant, C. W. Durant, Thomas Dunn, Wm. Newton, H. B. & Jno. M. Newton, exr's of John M. Newton, dec'd, & Richard Mortimer.

To the above-named complainants, or Messrs. Patterson & Rhinehart, their attor'eys; to the board of supervisors of Washington County, Iowa, or Messrs. Lewis & Bennett, their att'ys; the treasurer of
72 Washington County, Iowa; the Mississippi & Missouri Railroad Company; & the clerk of Washington dist. court:

Take notice that the defendants, whose names are subscribed hereto, will, and do hereby, take an appeal from the decree rendered in the above-entitled cause, and which decree is entitled as rendered at an adjourned term, begun on the 4th Monday of April, 1868, being an adjournment of the January term, 1868, being the last decree rendered herein in Washington dist. court, to the next term of the supreme court of the State of Iowa, to be held in Davenport, Iowa, in October, A. D. 1868. And the clerk will pleas make and certify, in due form, a full and correct transcript of all pleadings, stipulations, & other papers filed, and of all record entries made, in said cause.

June, 1868.

CLARK DURANT,
JOS. E. SHEFFIELD,
BETSEY D. TRACEY,
THOS. DURANT,
C. W. DURANT,
THOS. DUNN,
WM. NEWTON,
RICHARD MORTIMER,
H. B. & JNO. M. NEWTON,
Adm's of Jno. M. Newton, dec'd,
By GRANT & SMITH, *their Att'ys.*

Sheriff's fee, $1 75.

Which notice was endorsed as follows:

Due and legal service of the within notice accepted this 15th day of June, A. D. 1868.

PATTERSON & RHINEHART,
LEWIS & BENNETT,
Compl'ts. Att'ys.
LEWIS & BENNETT,
Att'ys for Wash. Co., Iowa.
C. T. JONES, *Clerk.*
R. GLASGOW,
Treas. of Washington Co. Iowa.
COOK & DEWEY,
Att'ys for Miss. & Mo. R. R. Co.

73 The record entries, comprising all orders, judgments, and decrees made by said district court in the foregoing cause, are as follows, to wit:

November term, 1860.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL. } Writ of injunction.

Now on this 16th day of November, 1860, this cause came on to be heard, on motion to transfer this cause from this court to the United States district court for the southern district of Iowa, held at Keokuk, Iowa. Motion overruled.

November term, 1861.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL. } Writ of injunction.

Now on this 16th day of November, A. D. 1861, this cause comes on to be heard, and is continued.

April term, 1862.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL. } Injunction.

Now on this 9th day of April, A. D. 1862, this cause comes on to be heard, and is continued.

September term, 1862.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL.

Now on this 16th day of September, A. D. 1862, this cause is submitted to the court.

74 January term, 1863.

NETHANIEL MCCLURE ET AL.
vs.
SAMUEL G. OWEN ET AL. } Injunction.

Now on this 22d day of January, A. D. 1863, this cause comes on to be heard, and is submitted to the court.

January term, Janu'y 19th, 1864.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL.

The death of the plaintiff in this cause is suggested. Amanda M. McClure & L. F. Sherman, executors of plaintiff, are, by the court, substituted as plaintiffs in this cause.

September term, 1864.

NETHANIEL MCCLURE ET AL.
vs.
SAMUEL G. OWEN ET AL.

Now on this 24th day of Sept., A. D. 1864, this cause comes on to be heard, and is submitted to the court.

January term, Janu'y 17, 1865.

NETHANIEL MCCLURE ET AL.
vs.
SAMUEL G. OWEN ET AL.

Now this cause, coming on for hearing, is submitted to the court.

75 AMANDA M. MCCLURE, EXECUTRIX, AND L. F. Sherman, executor, of the last will and testament of Nethaniel McClure, dec'd; John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent,
vs.
SAMUEL G. OWEN, TREASURER AND COLLECTOR; the board of supervisors of Washington County, Iowa, and their successors in office; the Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsy D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, & Richard Mortimer, respondents.

And now, to wit, on this 23d day of January, 1865, the same being the 7th day of the January term of the district court of Washington County, Iowa, for the year 1865, this cause comes on to be heard on the bill filed, the answers of deft's M. & M. R. R. Co., Clark Durant, Thomas Durant, Betsy D. Tracey, Joseph E. Sheffield, Thos. Dunn, William Newton, & Richard Mortimer, & exhibits on file with the petition; and the court, being fully advised in the premises, does find that the equity of the case is with said complainants, and that they, as well as those in whose behalf said bill is filed, to wit, all those liable to pay taxes in said Washington County, under the laws of the State of Iowa, and to be assessed for said purposes by the proper officers of said county, are entitled to the relief prayed for in said bill, does order, adjudge, and decree as follows:

First. That Samuel G. Owen, treasurer & collector of Washington County, Iowa, and his successors in office, be perpetually enjoined and restrained from proceeding to collect by distress and sale of prop-
76 erty, or in any other manner, all such taxes as were, prior to the year 1860, levied in said Washington County, Iowa, for the purpose of paying the principal or interest, or any part or portion of principal or interest, due, or to become due, on one hundred bonds of five hundred dollars each, issued to the Mississippi & Missouri Railroad Company, on the 7th day of June, 1858, by the county judge of said Washington County, and on one hundred bonds of one thousand dollars each, in like manner issued by the county judge to said respondent, the Mississippi & Missouri Railroad Company, on the 26th day of July, 1858, or on the coupons or interest bonds issued with them. And it is further ordered, adjudged, and decreed that said respondent, the board of su-

pervisors of Washington County, Iowa, & their successor or successors in office, be perpetually enjoined and prohibited from levying any tax in said Washington County for the purpose of paying principal or interest now due, or at any time hereafter to become due, on said bonds, or either of them, or on any interest or coupon bonds issued with said bonds, or any of them; and that said respondents, and each and every of them, be perpetually enjoined and prohibited from collecting or attempting to collect said bonds, or any of them, or [or] any interest bonds or coupons issued with them, by the levy and collection of any tax upon the taxable persons or property of said county. It is further ordered that said complainants recover from said respondents their costs herein expended, taxed at $.

(Signed) WM. LOUGHRIDGE, *Judge.*

77

78 September term, 1865.—Washington district court.

McCLURE ET AL.
vs.
OWEN ET AL.

Now, on the 19th day of September, 1865, the second day of the term of this court, after said cause is decided, comes the Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsy D. Tracey, Joseph E. Sheffield, Thomas Dunn, William Newton, & Richard Mortimer, and pray an appeal in this cause to the supreme court, which is allowed them; and the said appeal is to be made a supersedeas upon the defendants filing a bond in thirty days, to be approved by the clerk of this court, in the penal sum of one hundred dollars, which bond may be dated as of the term when the decision was made, nunc pro tunc, and to have the same effect as if filed of said term; and notice of appeal given within said thirty days, to have the same effect as if given in thirty days after the term at which the decree is made.

WM. LOUGHRIDGE, *Judge.*

September term, 1866, Sept. 24th.

McCLURE ET AL.
vs.
S. G. OWEN ET AL.

Now this cause is heard upon motion to make the board of supervisors of Washington County, Iowa, party defendant; which motion is sustained by the court. Lewis & Bennett appear for said board of supervisors, and the said board are to answer within 30 days.

79 January term, Janu'y 29th, 1867.

McCLURE ET AL.
vs.
S. G. OWEN ET AL.

Now this cause is continued by agreement of parties.

September term, Sept. 17th, 1867.

McCLURE ET AL.
vs.
S. G. OWEN ET AL.

Now this cause is submitted to the court.

Adjourned January term, 1868.—Tuesday, 28th day of April, 1868.

AMANDA MCCLURE, EX'R'X OF ESTATE OF Nethaniel McClure,
vs.
S. G. OWEN ET AL.

Now on this day this cause is ordered by the court to be redocketed, on motion of def'ts Mortimer et al., by Grant & Smith, their attorneys.

EXECUTORS OF MCCLURE ET AL.
vs.
S. G. OWEN ET AL.

And now, on this 28th day of April, A. D. 1868, this cause comes on for hearing, on petition and affidavit of Joseph E. Sheffield, Clark Durant, Richard Mortimer, and other defendants in said petition named, for removal of said cause to the circuit court of the United States for the district of Iowa, and, after argument, it is ordered and adjudged that said petition be not granted; to which said Sheffield and othrs except.

(Signed) E. S. SAMPSON, *Judge.*

80 District court of Washington County.

EXECUTORS OF MCCLURE ET AL.
vs.
THE BOARD OF SUPERVISORS, TREASURER OF Washington County, Mississippi & Missouri Railroad Company, Clark Durant, Thomas Durant, Betsey D. Tracey, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, & Richard Mortimer.

At an adjourned term, begun on the 4th Monday of April, 1868, being an adjournment of the January term, 1868:

Be it remembered that in this action, which was submitted at the September term, 1867, upon final hearing, Messrs. Patterson & Rhineart appeared for the plaintiffs; Lewis & Bennett, for the board of supervisors and treasurer; Grant & Smith, for all the other defendants who have answered upon all the pleadings of the parties made of record in the case, and the agreed statement of facts filed January 29th, 1867; and, without other or further evidence, the court, after examination of all pleadings and evidence in the cause, and having heard the argument of counsel, and being fully advised in the premises, finds the equity of the case to be with the plaintiffs.

It is therefore ordered, adjudged, and decreed by the court, that the board of supervisors of said county of Washington, as well as any successive board, as the board as now constituted, or any officers or financial agents of the county who may have authority of law to levy taxes, be perpetually enjoined, restrained, and commanded to refrain from at any time levying any taxes whatever to pay the principal or interest due, or to become due, on any bonds issued by the county judge of said county on the 7th day of June, 1858, and the 26th day of July, 1858, to the Mississippi & Missouri Railroad Company, or issued to aid in
81 the construction of the Mississippi and Missouri Railroad Company, or which may have been delivered to said company, its officers, or agents.

That the county treasurer of said county, his agents, deputies, and suc-

cessors in office, be forever enjoined and restrained from proceeding in any manner to collect the taxes levied by the county judge for the years 1858 & 1859, to raise money for the payment of interest on said bonds.

That the holders of said bonds be forever prohibited from proceeding to collect said bonds by taxation upon the people or property of said county; that the temporary injunction heretofore herein granted be made perpetual; that the defendants pay the costs of the suit.

(Signed) E. S. SAMPSON, *Judge.*

STATE OF IOWA, *Washington County, ss:*

I, C. T. Jones, clerk of the district court in and for said county, do hereby certify the foregoing to be a full, true, and complete transcript of all pleadings, stipulations, agreements, and all papers on file in said cause, as well as of all record entries therein.

Witness my signature and the seal of said court affixed at my office in Washington, in said county, this 27th day of August, 1868.

[SEAL.] C. T. JONES,
Clerk of Washington County District Court.

82 At an argument term of the supreme court of Iowa, begun and held at the city of Davenport, on Tuesday, the 6th day of October, A. D. 1868—

Present the Hon. John F. Dillon, C. J.;
" Chester C. Cole,
" George G. Wright, } Judges—
" Joseph M. Beck,

When the following, among other, proceedings were had and done, to wit:

WEDNESDAY, *October 7th*, 1868.

NETHANIEL MCCLURE ET AL.
against
SAMUEL G. OWEN ET AL., APP'L'TS. } Appeal from Washington County.

On this day, this cause coming up for hearing, is submitted to the consideration of the court on printed and written argument of counsel.

And at a regular term of said court, begun and held at the capital in the city of Des Moines, on Monday, the 7th day of December, A. D. 1868—

Present, the Hon. John F. Dillon, C. J.;
" Chester C. Cole,
" George G. Wright, } Judges—
" Joseph M. Beck,

When the following, among other, proceedings were had and done, to wit:

TUESDAY, *December* 17, 1868.

NETHANIEL MCCLURE ET AL.
vs.
S. G. OWEN ET AL, APP'L'TS. } Appeal from Washington County.

83 This cause having been heretofore submitted to the consideration of the court, and the court being now fully advised in the premises, find there is no error in the judgment of the district court,

and file their written opinion. It is therefore considered by the court, that the judgment of the court below be, and it is hereby, affirmed, and that a writ of procedendo issue accordingly. It is further considered by the court, that the appellees have and recover off and from the appellants the costs herein expended at this court, taxed at $45\frac{25}{100}$, and that execution issue therefor; and, on motion, and at the request of Clark Durant et al., appellants, it is ordered that it be entered of record that said Clark Durant & others, appellants in this cause, made the question before this court that the decision of the court below violated that clause in the Constitution of the United States which provides that no State shall pass any law impairing the obligations of contracts, and the decision of this court upon that question was against the right set up by the appellants under such clause of the Constitution, and appellants thereupon prayed a writ of error to the Supreme Court of the United States, which is allowed upon their giving good and sufficient bond as provided by law, to be approved by this court, which is done.

84 McCLURE ET AL. *vs.* OWEN ET AL. } Appeal from Washington district court.

In chancery.

The plaintiffs, who are tax payers of Washington County, in May, 1860, filed the original bill herein to restrain Owen, the treasurer of the county, and others, from the collection of certain taxes for the payment of interest on bonds issued by the officers of the county, in payment of a subscription by the county to the capitol stock of the Mississippi and Missouri Railroad Company. This railroad corporation was made a party defendant to the bill. The bill asks the relief of a perpetual injunction against the defendants, officers of the county and others, to restrain them from the collection of taxes for the payment of said bonds and the interest thereon, &c., &c. The grounds for this relief, as shown in the bill, are irregularity in the acts of the officers of the county in issuing the bonds, and want of power in the county, under the constitution and laws of the State, to issue such obligations.

The cause has been before in this court, and was reversed and remanded on account of defect of parties, and because it was decided in vacation without consent (21 Iowa, 134). After being remanded, the proper parties were made defendants. Certain holders of the bonds of the county, which are the subject of the litigation, made themselves defendants, and answered the bill. The district court rendered a decree in accordance with the prayer of the bill. The defendants, the Mississippi & Missouri Railroad Co., and Durant and others, bondholders, appeal.

GRANT & SMITH,
For Appellants.
PATTERSON & RHINEART,
For Appellees.

85 BECK, J.—Certain grounds of error, as that after the reversal of the cause in this court it could not be again tried in the court below; that the bondholders, who are defendants, have recovered judgment upon their bonds in the federal courts; and that proper application was made to and refused by the court below to transfer the case to the United States circuit court, are pointed out in the printed argument of appellants' counsel; but they expressly ask a decision on another ground, and desire that point to be decided solely. We do not hesitate

to comply with the wishes so plainly expressed by appellants' counsel, that they, in fact, amount to a waiver of errors on their part, if any should be found in the points they suggest. If the parties are content with such rulings of the court below, so far as to ask us to omit a review of them, we know of no reason why we should not comply with their request. The only point made by appellants' counsel which they call upon us to decide is, in their language, this: "The decision of the court below impairs the obligation of the contract made with the bondholders on commercial paper, that a specific tax should be levied to pay the bonds." This court has often held that, under the constitution of the State, bonds of the character of those involved in this suit cannot be issued by the counties and municipal corporations, and are therefore void; that contracts of this kind are unauthorized and forbidden by the constitution, and cannot therefore be enforced by the courts of the State. The decisions in thus declaring such instruments void, in effect hold that they are not contracts at all, inasmuch as the counties and cities issuing them are in no manner bound by them. Without at length pointing out the distinction, it is very obvious that a decision of
86 a court declaring a contract null ab inito—an instrument to be no contract at all—is a very different thing from a decision impairing the obligation of a valid contract, whereby a valid instrument is rendered inoperative and its binding effect destroyed. It is the duty of courts not only to construe contracts, and to apply them to their proper subjects, but also to pass upon their binding effect and obligation; and if from want of power in the obligors to contract, or from want of power in the contracts themselves, or because they are contrary to public policy, contravene the laws of the State, either as contained in the constitution, statutes, or adjudications of the courts, they will be declared null, and will not be enforced. This power is continually exercised, and questions as to the validity of contracts probably arise more frequently in the courts of our State than any other class of questions. The power of the courts in such cases to determine the validity of contracts cannot be denied. It is the power exercised in the case before us, where a contract is declared null because it contravenes the constitution of the State. Laws impairing the obligation of contracts are repugnant to express provisions of the constitution of the State as well as of the United States. The prohibition of these constitutional provisions extends to laws that impair the obligation of valid, existing contracts, and cannot be extended to judicial decisions which declare an instrument void, because it contravenes the constitution, or is in conflict with public policy, and is therefore held to be in fact no contract at al. A contrary doctrine has never been advanced in any court of the Union, so far as we are advised. No more fit occasion for the discussion of this doctrine by counsel, and its recognition by the courts, if it be true, could have been presented than the cases, in the State and federal courts, growing
87 out of the frequent litigation upon bonds of the character of those involved in the case before us. We have not observed that in such cases it has even been advanced by counsel or refered to in the opinions of the court, except in one instance, where it is denied that the question can with reason be raised.

We are asked by appellants' counsel to change the later rulings of his court, and abandon the principles of the adjudications so frequently heretofore announced in the cases that have arisen upon these county and city railroad bonds. This we are asked to do, not because these rulings and the principles of construction of our constitution upon which they are based are unsound, but because the Supreme Court of the

United States, which is termed, in the language of appellants' counsel, the final arbiter upon these questions, has disregarded the decisions of this court, and, in cases before it, has overruled them. The questions determined, and upon which there has thus arisen a conflict between this court and the federal courts, are purely those arrising upon the construction of the laws and constitution of our own State. The language of counsel is therefore incorrect. The Supreme Court of the United States is not in cases of this kind the final arbiter. That august tribunal, the court of last resort in all cases within the federal jurisdiction, as prescribed by the Constitution and laws of the Union, is not charged with the grave duty and great power of construeing the constitution and laws of the States except where they may be in conflict with the federal laws and Constitution, and of establishing thereby a rule of construction obligatory upon the State courts. In questions of this kind it is in no sense the final arbiter; but, by [by] a course of adjudication, begining at the foundation of the government, and extending to the present time, it is required to look to the courts of the States for
88 the rules of construction of their respective laws and constitutions. Upon such questions it is, in law and in fact, inferior in authority to the courts of the State. It has the power to disregard the decisions of the State courts upon such questions, and to enforce its own decisions in a class of cases over which it has jurisdiction; but the superior authority of its decisions upon these questions has not been, and never can be, admitted. We cannot, therefore, be expected to conform our rulings to the opinions of that court upon questions of this character, when they are in conflict with the adjudications of this court. A brief history of the conflict between this court and the United States Supreme Court, and the grounds of the conflicting decisions, is not out of place here. No attempt will be made to give the reasons upon which are based the rulings of this court. That has been fully, clearly, and ably done in the cases which will be refered to. It is held in the State ex rel. vs. the County of Wapello (13 Iowa, 389) by a unanimous court, in a carefully-prepared and well-considered opinion, after elaborate and profound argument by counsel, among the ablest in the State, that the constitution confers no power upon the legislature to authorize counties and cities to become stockholders in railroad corporations, and to borrow money upon their bonds, for the purpose of payment upon such stock, and that under the constitution they are forbidden so to do. This decision was made in June, 1862, and has been followed and reaffirmed by the following cases:

Myers vs. Johnson County, 14 Iowa, 47.
McMillan et al. vs. Byles et al., ibid., 107.
Rock et al. vs. Wallace, ibid., 563.
Smith vs. Henry County, 15 Iowa, 385.
Ten Eyck vs. the Mayor of Keokuk, ibid., 486.

89 The principles of these adjudications, independent of their authority, have the unqualified approval of this court as now constituted. We see no reason to depart from these rulings. It would answer no useful purpose to restate here the arguments in support of the doctrines they announce; it will not therefore be attempted.

Prior to these cases a different doctrine, touching the power of counties and cities to become stockholders in railroad incorporations, and to borrow money for that purpose, had obtained in this court, though never announced in a unanimous decision, always doubted, feebly presented when first announced, and never afterwards attempted to be sustained

upon reason, but when assented to without an effort to support it. This constitutional question is briefly discussed in the majority opinion in Dubuque County vs. the Dubuque and Pacific Railroad Co. (4 Green, 1), which is the first case in which it arose. Two paragraphs are devoted to it, and its discussion is as unsatisfactory to the advocates of the doctrine as to those who oppose it. A dissenting opinion, in which the question is fairly and ably discussed, was rendered by one of the justices. The majority opinion was never filed with the clerk, and was not published until five years after its announcement. It was then published by Judge Green, who had ceased to be one of the justices of the court and its official reporter. In no subsequent case is the question discussed. In three cases by a majority of the court, the decision in Dubuque Co. vs. Dubuque & Pacific R. R. Co. is sanctioned; in two other cases, it is referred to as having been made; and in four cases, usually cited to sustain the decision, the question involved was not argued by counsel
90 nor decided by the court. In the State ex rel. vs. Bissel (4 Green, 328), the constitutional question was not argued, and the court did not pretend to decide it. The opinion in express words waives the question, and leaves it where it was left by the first decision. In Clapp vs. Cedar County (5 Iowa, 45), the question was not discussed. Dubuque County vs. the Dubuque & Pacific R. R. Co. is followed by the majority of the court, though doubts as to its correctness is expressed in language that amounts almost to a denial. Chief Justice Wright, in a dissenting opinion, denies in toto the authority of the decision. In Ring vs. Johnson County (6 Iowa, 268), the question is not discussed, and is passed by with the remark that the court has seen no reason to change its opinion since Clapp vs. Cedar County. Chief Justice Wright again dissents. In McMillan vs. Lee County (3 Iowa, 311), same case (6 Iowa, 304 & 393), Games vs. Robb (8 Iowa, 193), State ex rel. vs. Board of Equalization of Johnson County (10 Iowa, 157), which are often cited in support of the doctrine of Dubuque County vs. Dubuque & Pacific R. R. Co., the constitutional question is neither raised or argued by counsel, nor discussed or determined by the court; neither was its determination necessary, as the case passed off on other questions. I. Stokes vs. Scott County (10 Iowa, 166), the chief justice holds against the authority of Dubuque County vs. the Dubuque & Pacific R. R. Co.; while one of the justices assents thereto with doubts expressed in the strongest language, the other justice assents to the doctrine of the case upon the constitutional question. Out of seven judges who thus far have passed upon the question, four have expressed dissent to the interpretation of our State constitution, confering power upon the counties to become stockholders in railroad corporations and to borrow money for that purpose.
91 Not one unanimous decision had been made. While the adjudications upon this question rested upon such uncertainty, the State ex rel. vs. Wapello County was determined, and followed by the cases above mentioned, each decided by a unanimous court, and all holding clearly against the power. Prior to these decisions, it cannot be claimed, with fairness, that the question was settled by the adjudications of this court—there was more weight of judicial authority against the doctrine recognized by the decisions than in its support. No one could have been so far deceived as to believe that it was not an open question, and that future decisions thereon would not depend upon the force of the arguments in support of the principles upon which the question depended for its solution, rather than upon the authority of prior adjudications. As a matter of fact, it was regarded by the profession in this State as an open question, and no respectable counsel conver-

sant with the adjudications, would have given an opinion, based upon them, that the question was finally settled. After the case of the State ex rel. vs. Wapello County, and the cases following it, above cited, there has been and can be no doubt that the question, so far as the courts of this State are concerned, is at rest.

Such being the history and the condition of the adjudications of this question in Iowa, the case of Gilpeck vs. the City of Dubuque (1 Wallace, 202), was determined in the United States Supreme Court, wherein the late rulings of this court are disregarded and the earlier and overruled decisions are followed. The only point determined in that case which we will notice is this one: That in case of conflicting decisions of
92 State courts giving construction to the laws and constitutions of their own States whereby contracts are affected, the federal courts will follow the decisions which obtained at the date of the contract. A brief reference to the decisions of the Supreme Court of the United States will determine whether this is in accordance with prior rulings of that court.

The settled construction of a State statute of the supreme court of that State is a part of the statute, and will be followed by the federal courts.

Massengell vs. Downs, 7 How., 767.

Nesmith vs. Shelden, ib., 812.

Van Renselair vs. Kearny, 11 How., 297.

Webster vs. Cooper, 14 How., 504.

Shelly vs. Gray, 11 Wheat., 367.

Such a decision will be followed by the United States Supreme Court, though not in accordance with their opinion.

McKean vs. Delancy's lessee, 5 Cranch, 22.

The decisions of the State supreme court settling a rule of construction devises of lands, is binding upon the federal courts.

Jackson vs. Chew, 12 Wheat., 107.

Henderson vs. Griffin, 5 Pet., 151.

So is a decision of the State courts upon a State law of descents.

Gaidun vs. Collins, 2 Pet., 58.

So upon the statute of uses.

Henderson vs. Griffin, 5 Pet., 151.

The decisions of State courts affecting the title of lands are binding authorities upon the courts of the United States.

Rundle vs. Delaware & R. Canal, 14 How., 93.

93 Polk's lessee vs. Wendall, 9 Cr., 87.

Thatcher vs. Powell, 6 Wheat., 119.

Elmendorf vs. Tayler, 10 Wheat., 152.

Ross vs. Bailand, 1 Pet., 655.

"If the highest judicial tribunal of a State adopt new views as to the proper construction of a statute, and reverse its former decisions, the federal courts will follow the latest settled adjudications."

United States vs. Morrison, 4 Pet., 124.

Green vs. Neal, 6 Pet., 291.

Leffingwell vs. Warren, 2 Black., 599.

Other causes decided in the same court, sustaining the principles above stated, could be cited.

In Green vs. McNeal's lessee, the United States Supreme Court overruled two of its own decisions in order to follow the decision of a State court upon the construction of a State statute. Justice McLean, in delivering the opinion of the court, uses the following language, which is quite pertinent in the discussion of the question now under consideration:

"In a great majority of the cases brought before the federal tribu-

nals they are called to enforce the laws of the States. The rights of the parties are determined under those laws, and it would be a strange perversion of principle if the judicial exposition of those laws by the State tribunals should be disregarded." In discussing the question whether it is obligatory upon the federal courts to change their rulings so as to conform to a subsequent decision of a State court, he uses the following forcible argument: "If the construction of the highest judicial tribunal of a State form a part of its statute law as much as an enactment by the legislature, how can this court make a distinction between
94 them? There could be no hesitation in so modifying our decisions as to conform to any legislative alteration in a statute, and why should not the same rule apply when the judicial branch of the State government, in the exercise of its acknowledged functions, should, by construction, give a different effect to a statute from what had at first been given to it? The charge of inconsistency might be made with more force and propriety against the federal tribunals for a disregard of this rule than by conforming to it. They profess to be bound by the local laws, and yet they reject the exposition of that law which forms a part of it. It is no answer to this objection that a different exposition was formerly given to the act, which was adopted by the federal court. The inquiry is, what is the settled law of the State at the time the decision is made? This constitutes the rule of property within the State by which the rights of litigant parties must be determined." It does not require argument to show that the principles of the decisions above cited apply to the case of a construction of a State constitution by a State court. The same principles that require the federal courts to follow the decisions of the State courts in construeing statutes and to recognize rules of local law, require the federal courts to follow the construction given the constitution by the highest State tribunal. There is no distinction that warrants the disregard of the rule in cases involving the construction of the State constitution. This seems to be admitted in Gilpeck vs. the City of Dubuque (1 Wallace, 206), and the point is directly so ruled in Nesmith vs. Shelden (7 How., 812), Webster vs. Cooper (14 How., 504), above cited. The only cases that are cited as conflicting with this well-established course of adjudication are Rowan vs. Runnells (5 Howard, 134), and
95 the Ohio Life & Trust Co. vs. Debolt (16 How., 432). In the first-named case the court refuse to abandon a former ruling and follow the decisions of the supreme court of a State construeing its constitution. The highest tribunal of the State of Mississippi held that, by the constitution of that State, the importation and sale of slaves as merchandise was prohibited, and that all contracts for the sale of such slaves were void. Before this decision the Supreme Court of the United States had given a different construction to the constitution of Mississippi, and, in the case cited, Chief Justice Taney delivering the opinion, refused to change their ruling and follow the adjudication of the State court. Without attempting to point out that this case is not authority for disregarding decisions of State courts where no conflicting prior decision of the federal court exists, which is so clearly done by Mr. Justice Miller in his dissenting opinion in Gilpeck vs. the City of Dubuque, we may remark that it is in conflict in principle with the prior decisions of the same court above cited. The facts of the case will obtrude themselves upon our attention, and suggest the inquiry, whether the interests of the institution of slavery, the extension of which was favored not only by the great judge who announced the opinion in the case, but by the federal Supreme Court of that day, did not, in some degree, mould the doctrine of the decision. The Ohio Life & Trust Co. vs. Debolt

does not support the doctrine of the majority opinion in Gilpeck vs. the City of Dubuque. It was brought into the United States Supreme Court upon a writ of error to the supreme court of the State of Ohio, and the question presented was, whether a statute of the State of Ohio taxing certain banks impaired the obligation of a contract contained in the charters of these banks, or the law under which they were organized exempting them from such taxation.

96 The judgment of the Supreme Court was affirmed, and the law imposing the tax was held not to impair the obligation of any contract. Former decisions of the Ohio court were overruled by the decision so affirmed, and thus, in fact, the latter decision was followed by the federal court, though not upon its authority. In answer to the argument that the federal court should follow the later adjudications of the State courts upon the question involved, Chief Justice Taney uses the language quoted by Mr. Justice Sawyer in Gilpeck vs. the City of Dubuque, in support of the rule there announced, and refers approvingly to the doctrine announced in Rowan vs. Runnells, noticed above. The substance of the language is this, that if a contract when made, according to the decisions of the court of a State, was valid, it cannot be impaired by subsequent decisions changing the construction of a law. But it is apparent from the context that the rule is intended to apply in adjudications upon writs of error to the courts of the States and not in cases originally brought in the federal courts. At all events the point thus made was not in the record, and the opinion was concured in by, at most, but three judges. It is a noteworthy fact that this feeble dictum is absolutely the only authority cited by Mr. Justice Sawyer in support of the ruling of the court in Gilpeck vs. the City of Dubuque, a ruling that sets at naught the settled adjudications of the supreme tribunal of a State in the construction of its constitution. This one dictum is the only authority relied upon for this stretch of judicial power by the federal court, as alarming as it is regardless of precedents in that very court. It will be observed that, while it is quite true several decisions of this court, which by no means, as we have seen, settled the questions involved, and overruled by the series of adjudications declaring the county

97 and city railroad bonds void, the Supreme Court of the United States, in sustaining them, have overruled many cases in that court of well-established authority, and disregarded principles at the very foundation of the federal judicial power, without the restraining influence of which the country will be launched upon the stormy sea of judicial conflict between State and federal courts, or will avoid this by succumbing to the decree of one great federal arbiter of judicial questions. While Gilpeck vs. the City of Dubuque, as we have seen, is unsupported by authority, the opinion professes to be planted, in its own language, upon "truth, justice, and law." These, according to the theory of our jurisprudence, are to be found in the settled adjudications of the courts; and when judges leave the well-trodden paths of precedents, they are apt to find error and injustice. Courts cannot with safety disregard the law as established by a course of adjudications. While such decisions may, in some cases, attain the end of justice, the probability is they will work quite a different result, and, by disturbing precedents, will have the general effect of undermining the very fabrick of our system of jurisprudence. Not only is the decision under consideration remarkable for total disregard of precedent, but it is distinguished from all other decisions of the august tribunal that rendered it, as well as from those of all other high courts, in the use of language extremely disrespectful

towards the supreme court of a State. It is to be hoped that it may not be followed as a precedent for like offenses against judicial propriety.

Affirmed.

98 Mr. Justice Wright, having been of counsel in this case in the court below, took no part in its determination here.

STATE OF IOWA, *Supreme Court, ss:*

I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete transcript of all the papers filed in my office, of the record entries made in said court, and also of the opinion of said court in the cause of Nathaniel McClure & others against S. G. Owen & others, as full, true, and complete as the same remain of record and on file therein.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court. Done at the city of Des Moines, this 25th day of January, A. D. 1869.

[SEAL.]

C. LINDERMAN,
Clerk Supreme Court Iowa.

Costs in supreme court Iowa	$45 25
This transcript	32 50
	$77 75

99 The United States of America to Amanda M. McClure, executrix, & L. F. Sherman, executor, of the last will & testament of Nathaniel McClure, deceased; John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent; Sam'l G. Owens, treas. & col; & b'd of sup's of Washington Co., Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein Clark Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, Richard Mortimer, Thomas Durant, & the Mississippi & Missouri Railroad Company are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment & decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John F. Dillon, chief justice of the supreme court of the State of Iowa, this 19th day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

(Signed) JNO. F. DILLON,
Chief Justice of Supreme Court of Iowa.

(Indorsed:) McClure & al. vs. Owens & al. Copy of citation.

Filed Dec. 19, 1868.

C. LINDERMAN, *Clk.*

100 The United States of America to Amanda M. McClure, executrix, & L. F. Sherman, executor, of the last will & testament of Nathaniel McClure, deceased; John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent; Sam'l G. Owens, treas. & col'r; & the b'd of sup's of Washington Co., Iowa, defendants in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first

Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein Clark Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, Richard Mortimer, & Thomas Durant, & the Mississippi & Missouri Railroad Company are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment & decree rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John F. Dillon, chief justice of the supreme court of the State of Iowa, this 19th day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

JNO. F. DILLON,
Chief Justice of Supreme Court of Iowa.

On this 26th day of December, in the year of our Lord one thousand eight hundred and sixty-eight, personally appeared A. Bunker before me, the subscriber, clerk of the dist. court of Washington County, Iowa, and makes oath that he delivered a true copy of the within citation to Amanda McClure, Michael Hayes, John Mather, O. H. Prizer.

L. F. Sherman is deceased; and W. R. Nugent cannot be found in Washington County, Iowa.

A. BURKE, *Sheriff.*

Sworn to and subscribed by the said A. Bunker, December 26th, A. D. 1868.

[SEAL.] C. T. JONES, *Clk Dist. Ct.*

Sheriff's fees, $5 35.

Received my fees.

A. BUNKE, *Sheriff.*

On this 7" day of January, A. D. 1869, personally appeared E. M. Ledgerwood before me, the subscriber, clerk of the dist. court of Clarke Co., Iowa, and makes oath that he delivered a true copy of the within citation to W. R. Nugent, in Osceola, Clarke Co., Iowa.

E. M. LEDGERWOOD.

Sworn to and subscribed by the said E. M. Ledgerwood January 7th, A. D. 1869.

[SEAL.]

A. H. BURROWS,
Clerk Dist. Court Clarke Co., Iowa.

Sheriff's fees, 1$.

(Indorsed:) McClure & al. vs. Owens & al. Citation.

Filed Dec. 19, 1868.

C. LINDERMAN, *Clk.*

101 Know all men by these presents, that we, Clark Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, Richard Mortimer, & Thomas Durant, & the Mississippi Railroad Company, as principals, & Spier Whitaker & Chas. Whitaker, as sureties, are held and firmly bound unto Amanda M. McClure, executrix, & L. F. Sherman, executor, of the last will & testament of Nathaniel McClure, deceased; John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent; Sam'l G. Owens, treas. & col'r; & b'd of sup's of Washington Co., Iowa, in the full and just sum of five hundred dollars, to be paid o the said obligees' certain attorney, executors, administrators, or as-

signs; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 19th day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately, at a term of the supreme court of Iowa, in a suit depending in said court between Amanda M. McClure, executrix, & L. F. Sherman, executor, of the last will & testament of Nathaniel McClure, deceased; John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent, compl'ts, & the above-named obligors & others, to wit, Clark Durant, Betsey D. Tracy, Joseph E. Sheffield, Thomas Dunn, Wm. Newton, Rich'd Mortimer, Thos. Durant, & M. & M. R. R. Co.; S. G. Owens, treas. & col,; & b'd of sup's of Washington Co., Iowa, defendants, decree was rendered against the said obligors herein, to wit, Jos. E. Sheffield, Clark Durant, Thos. Dunn, Rich'd Mortimer, Betsey D. Tracey, Wm. Newton, Thomas Durant, & the Miss. & Mo. R. R. Co.; and the said Clark Durant, Betsey D. Tracy, Thos. Dunn, Wm. Newton, Rich'd Mortimer, Th's Durant, & the Miss. & Mo. R. R. Co.. having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Amanda M. McClure, executrix, & L. F. Sherman, executor, of the last will & testament of Nathaniel McClure, deceased; John Mather, Michael Hayes, O. H. Prizer, & Wm. R. Nugent; Sam'l G. Owens, treas. & col.; & the b'd of sup's of Washington Co., Iowa; citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Clark Durant, Betsey D. Tracy, Th's Dunn, Wm. Newton, Rich. Mortimer, Th'm's Durant, & the Miss. & Mo. R. R. Co., & Jos. E. Sheffield, shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CLARK DURANT,
BETSY D. TRACY,
THOS. DUNN,
WM. NEWTON,
RICH'D MORTIMER,
THOS. DURANT, &
M. & M. R. R. CO.,
By GRANT & SMITH, *their Att'ys.* [L. S.]
S. WHITAKER. [L. S.]
C. WHITAKER. [L. S.]

Sealed and delivered in presence of—
S. F. SMITH,

Approved by

JNO. F. DILLON,
Chief Justice of Sup. C't of Iowa.

(Indorsed:) McClure & al. vs. Owens & al. Bond.

Filed Dec. 19, 1868.

C. LINDERMAN, *Clk.*

(Indorsement on record:) Supreme Court Iowa. No. 451. The Mississippi & Missouri Railroad Company, Clark Durant, et al., plaintiffs in error, vs. Amanda M. McClure, ex'tx, & L. F. Sherman, ex'or, of Nathaniel McClure, dec'd; John Mather et al.

Filed 7th April, 1869.

SUPREME COURT

OF THE UNITED STATES.

DECEMBER TERM, 1869.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA,
Plaintiffs in Error,
vs.
THE U. S. EX. RE CLARK DURANT,
Defendant in Error.

Error to Circuit Court for the District of Iowa.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA,
Plaintiffs in Error,
vs.
THE U. S. EX. RE. CLARK DURANT,
Defendant in Error.

Error to Circuit Court of the District of Iowa.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA, *Plaintiffs in Error,* *vs.* THE U. S. EX. RE. RICHARD MORTIMER, *Defendant in Error.*	*Error to the Circuit Court of the District of Iowa.*
THE MISS. R. R. CO. AND CLARK DURANT AND OTHERS, *Plaintiffs in Error,* *vs.* AMANDA MCLURE AND OTHERS, *Defendants in Error.*	*Error to the Supreme Court of Iowa.*

These four cases are so much alike, in the facts and principles to be settled, that we propose to argue them, in behalf of the defendants in error, in the first three, and the plaintiffs in error in the last, as one case.

STATEMENT OF FACTS.

BOARD SUPERVISORS, *vs.* UNITED STATES EX. DURANT.	*First Durant Case.*

Clark Durant filed his information and obtained an alternative writ of mandamus on the 1st of April, 1867, to compel the levy of taxes to pay a judgment of the Circuit Court of Iowa in his favor, on the following state of facts:

On the 21st of November, 1853, the County Judge of Washington County, Iowa, in due form of law, submitted to the voters of that county a proposition to subscribe a hundred thousand dollars to the Philadelphia, Fort Wayne & Platt River Railroad and issue the bonds of the county therefor. A majority of the electors of said county voted for the proposition and it was duly entered at large on the minute book of the county.

On the 7th of August, 1854, the County Judge, in due form of law, submitted a proposal to rescind fifty thousand dollars of this intended subscription and subscribe fifty thousand dollars to the stock of the Mississippi & Missouri Railroad Company, and issue ten per cent. bonds therefor, payable in twenty years, a tax of five mills for the first fifteen years, and after that one per cent. was to be levied to pay the principal and interest of said bonds. This proposition was duly adopted and recorded at large, and the bonds issued.

On the 5th of April, 1858, by a like vote of the electors of the county, duly submitted and recorded, the county subscribed for a hundred thousand dollars more of stock and issued a like number of ten per cent. interest bearing bonds, to be paid by a tax, first of three mills and then of one per cent., until the bonds and interest were paid;

copies of the bonds and coupons are set out in the information and writ.

On the 15th of August, 1860, misprinted in one part of the record 1861, Clark Durant, holding a large quantity of each class of said bonds and coupons, commenced a suit in the District Court of Iowa to enforce payment. On the 17th of September the defendant, the County of Washington, appeared and interposed a plea to the jurisdiction of the Court, on the ground that McLure and others had commenced proceedings in the State Court against the county officers and unknown owners of the bonds to enjoin the collection of taxes to pay interest on the bonds, and had obtained an injunction in the State Court in the month of April previous. This plea was overruled; the defendants answered, and in March, 1862, an agreed case was made, to stand as a special verdict of a jury; setting out the whole facts connected with the issue of said bonds, and the defendant claims that the bonds were unconstitutional and void. Upon this agreed cause, the Court found the law to be with the plaintiffs, and on the 1st of April, 1862, adjudged that the plaintiff recover of the defendants 25,532 $\frac{50}{100}$ dollars.

The vote on the issue of these bonds required the County Judge and his successor, the Board of Supervisors, to levy yearly taxes to pay the interest on said bonds. The information sets out a refusal to levy these taxes, after demand; the amount of each class of bonds included in the judgment and a prayer for a writ of mandamus.

An alternative writ was issued at May Term,

1867. See record, page 7, returnable to September Term of the same.

To this writ the defendants showed cause (page 12 of record), pleading the same proceedings in the State Court, which they had pleaded in bar of the plaintiff's judgment and which had been overruled as no defence.

The relator replied to this plea, October 30, 1867, that the judgments in the State Court had been reversed. Record, page 21.

On the 13th May, '68, the defendants had leave to file an amended answer, admitting the general allegations of the alternative writ and setting up as a reason why the peremptory writ showed that they had been enjoined by the proceedings in the State Court from levying and collecting any taxes to pay the interest on said bonds, (record, page 23), and that if they proceeded to levy and collect taxes to pay said judgment they would be arrested by the State Court for a contempt of that Court. No copy of the record in the State Court was proffered to the Court below.

The plaintiff demurred to this return.

1. Because the record was imperfect (not all set out).

4. Because any defense arising out of the State Court proceedings ought to have been and was pleaded in bar of the action in this Court, and being held invalid as a bar to the action, was no bar to the writ in that cause.

5. Because the mandamus is the process of execution in this cause, and no proceedings in the

State Court can be a bar to the enforcement of the judgment.

6. Durant having begun his writ in this Court before he intervened in the State Court, no proceedings in that Court can bar his remedy in this.

7. Because this Court, having jurisdiction to render the judgment, has jurisdiction to enforce it, and no State Court can prevent it.

This demurrer was sustained; the defendants abided by the demurrer, and brought this writ of error.

There is nothing for us to argue to sustain this judgment for the peremptory writ; the judgment on the coupons was conclusive, and no defence could be made to the action after that under pretence of State Court proceedings.

But there is a question to which we ask the attention of the Court.

This cause is stayed by a five hundred dollar bond on a twenty-five thousand dollar judgment. This Court has held that as the county property could not run away, the plaintiff was secure of his debt under the new rule; but this Court has not decided that the defendants will not be punished in damages for taking up this cause, and delaying the plaintiff in the collection of his debt, upon a defence in which he has been delayed since 1862, and which has been repeatedly decided against defendant, and we ask of the Court to put a stop to these delay appeals, by giving to the plaintiff in this cause the highest damages which the law permits.

CASE NO.

Same Parties.—Judgment an the same bonds for coupons, falling due after first judgment rendered by due process of law, 16th May, 1867, for $70,652 37; the information prays for a levy of taxes under the execution law for the whole judgment, as well as under the votes issuing bonds.

The defendants admit this issue of bonds, and the recovery of the judgment, and set up the same State Court injunction, of which they furnish a record in part, showing that the cause in the State Court was appealed to the Supreme Court of the State. The demurrer is for the same grounds.

As we know that there is no excuse for this appeal, and the bond is merely nominal, we ask for the affirmance of the judgments, with damages.

BOARD SUPERVISORS WASHINGTON COUNTY

vs.

U. S. EX. RE. R. MORTIMER.

Third case.

These proceedings are on a judgment in favor of Mortimer for subsequent interest on the same bonds as No. , and the remedy is sought under the general execution law as well as the vote on the bonds. The judgment for the plaintiffs was rendered on

16th October, 1867, for $4,363 45. This record sets out the information, alternative writ, demurrer to return, judgments for the plaintiff sustaining his demurrer; no abiding by the demurrer, but a statement that the defendants excepted. There is no bill of exceptions and no return whatever filed. There is an appeal bond and citation within ten days, and an agreement that the answer filed in the case of Clark Durant shall be considered and treated as filed as the answer in this cause. We do not see how this Court is to discover what the answer was without its being filed here, but we shall make no objection on that score, if the plaintiff will let us know in which of these records is the answer.

As the judgment on the coupons was never appealed from, and this writ of error, with a five hundred dollar bond, is a mere sham, we ask the Court to affirm the judgment, with the largest damages known to the law.

We now address the Court for the plaintiffs in error, No.

THE MISSISSIPPI AND MISSOURI R. R. COMPANY and C. DURANT, and others, *Plaintiffs in Error*,

vs.

AMANDA MCLURE and others.

Error to the Supreme Court of Iowa.

This is one of the causes in which the Supreme Court of Iowa undertook to resist the jurisdiction of

the Federal Court, and which they have since reversed, in the habeas corpus case of Holman. Opinions in that cause have been printed in advance of the Reporter, and copies are furnished to the Court.

The facts of the cause are briefly stated.

This is the same cause repeatedly pleaded in the bar of Durant and others vs. The County of Washington and its officers.

On the 12th of April, 1860, Nathaniel McLure and other citizens of Washington County, filed their Bill in Equity, in the State District Court of Washington County, against Owens, the tax collector, Dewey, the County Judge, the Mississippi and Missouri Railroad Company, to restraining the collection of taxes to pay interest on the bonds of the County issued to the Mississippi and Missouri Railroad Company, to aid in building that road, which had been issued during the period when the State Courts held such bonds valid and constitutional. The bill alleged some formal objection to the vote in part of the bonds, but as the bonds recited a compliance with the law, that objection was abandoned, and the whole ground on which the tax was resisted was that the bonds were unconstitutional and void. On the 12th of April, 1860, an injunction against the collection of this tax was allowed by Miller, District Judge. On the 20th of July, 1860, the Mississippi and Missouri Company answered this bill denying any irregularity in the issue of the bonds, setting out in full a compliance with the law by the electors, and a compliance with the contract by the Railroad Company, denying any notice of any irregularity in the issue, alleging that

they were constitutional and valid; that Clark Durant and others were bona-fide holders for value. The complainants on the 26th of July amended their bill and made Clark Durant and others parties, calling on them to disclose what they paid for said bonds, and whether they were stockholders in Mississippi and Missouri Railroad Company. On the 14th of November, 1860, after Durant had commenced his suit in the United States Courts, he and other holders appeared in the State Court and applied to transfer the said cause to the United States Court, their motion was overruled, and the Courts of Iowa holding that where a party appears in a cause for any purpose, he is in for all purposes. Clark Durant and others had no alternative but to answer, and on the 16th of November, 1860, he and others answered, denying all the equities of the bill setting up the constitutionality and validity of the bonds, that they were bona-fide holders for value, and entitled to have the taxes ruled collected for their benefit. The cause in the State was not again moved until January, 1864, when an exception was taken to the answer. On the 16th of June, 1865, Clark Durant and others further answered, that they had formerly appeared in said cause and applied to have the same transferred to the United States Court, and that on the 15th of August, 1860, before them appeared in the State Court, Clark Durant, for himself and them had brought a suit, in the then District Court of the United States for the District of Iowa, upon said bonds and coupons, and that on the 17th of September, 1860, the County of Washington had appeared in said cause, and filed a plea to the ju-

risdiction; that the plaintiff demurred thereto and the demurrer was sustained, and such proceedings were afterwards had; that the defendants pleaded in bar of said action the matter at issue in this bill, and particularly that the bonds were nnconstitutional and void: that an agreed case was made in relation to the issues of said bonds, the cause was submitted to the Court, judgment was rendered on the 22d of May, 1863, in favor of Clark Durant, and the defendant had taken said cause to this Court, where it was then pending. The District Court of Iowa heard the cause in vacation in the bill, answer annexed, record annexed to exhibits, rendered a decree for the plaintiffs, McLure and others, as of January term, 1865. Durant and others appealed this cause to the State Supreme Court, where it was reversed because decided in vacation.

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The second decree of reversal is not in this Court, but as the fact is conceded in the pleadings and record of the cause, we do not ask for a certiorari to send the order up. After the reversal, the complainants made the Board of Supervisors parties defendants; Durant and others further answered that the case of Durant vs. The County of Washington was affirmed in the United States Supreme Court. That the bonds and coupons were negotiable instruments, and the holders had received them for value, at a time when the State Courts held that they were valid, and that any subsequent decision of the State Courts, adverse to their validity, impaired the obli-

gations of the contract, and that they were entitled under the constitution of the United States to a decree in their favor. The said Durant and others further answered and set up the second judgment in favor of Durant in the United States Circuit Court for Iowa for $70,652, and averring that said judgment was a bar to the remedy sought. It was also agreed, by the attorneys for Washington County, that the County had appeared in the United States Court and resisted the plaintiff's (Durant) recovery on the same grounds set up in this bill, and that the defendant brought the cause to this Court and the writ of error was dismissed, and that the second judgment of Durant was rendered by agreement.

The recent Acts of Congress having authorized the transfer of this cause to the Federal Court on the 28th of March, 1868, Durant and others applied in due form for the transfer. The State Court overruled the applications, and that the April term, 1868, upon bill and answers and exhibits above, held the bonds unconstitutional and void, and perpetually enjoined the collection of any taxes to pay the principal or interest on such bonds. Durant and others, bondholders of the Mississippi and Missouri Railroad, appealed to the Iowa Supreme Court, and sought to reverse the same upon the sole ground that the decision below impaired the obligations of the contract. The Supreme Court of Iowa in December, 1868, affirmed the decree below, and by their decree impaired the obligation of the contract. The judgment of the Court, and opinion of the Court, both by the laws of Iowa, a part of the record, de-

clare, that the plaintiffs in error made the question, that the decision impaired the obligation of the contract, and that the Court decided adversely to the plaintiffs in error.

There is no argument for us to make here. All objections to the jurisdiction that the Supreme Court of Iowa might have decided this cause in some other than the constitutional question, are obviated by the Supreme Court of Iowa placing in the judgment that it has so decided, and in the opinions of the Court, which is a part of the record. The Court says: "That the only point we make is that the decision impairs the obligations of the contract." They decide against us. This Court has so repeatedly decided the question in our favor, that we have as little inclination to argue it as the Court has to hear the repetition. We pray that the judgment may be reversed.

GRANT,

For the Plaintiffs in Error.